

Caidcoll

Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

07 Cr. 1170 (LAP)

5 JOSEPH P. COLLINS,

6 Defendant.

7 -----x

October 18, 2012
10:02 a.m.

8 Before:

9 HON. LORETTA A. PRESKA,

10 District Judge

11 APPEARANCES

12 PREET BHARARA

13 United States Attorney for the
Southern District of New York

14 BY: HARRY A. CHERNOFF

MICHAEL A. LEVY

15 EDWARD A. IMPERATORE

Assistant United States Attorneys

16 COOLEY LLP

17 Attorneys for Defendant

18 BY: WILLIAM SCHWARTZ

JONATHAN BACH

LAUREN GERBER LEE

19 - also present -

20 Kathryn Searles

21 Robert Clark,

Postal Inspectors, U.S. Postal Inspection Service

22 Gary Smith,

23 Paralegal, U.S. Attorney's Office

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Trosten - direct

1 (Trial resumed; jury not present)

2 THE COURT: Good morning, ladies and gentlemen.

3 May we bring the jurors in, please?

4 MR. CHERNOFF: Yes, your Honor.

5 (Time noted at 10:05 a.m.)

6 THE CLERK: Jury entering.

7 (Jury present)

8 THE COURT: We continue with the direct examination of
9 this witness.

10 Mr. Chernoff.

11 MR. CHERNOFF: Thank you, your Honor.

12 ROBERT TROSTEN,

13 Resumed, and testified further as follows:

14 DIRECT EXAMINATION (Resumed)

15 BY MR. CHERNOFF:

16 Q. Mr. Trosten, when we broke yesterday, we had been talking
17 about some of the agreements and payments that were made at the
18 time of the closing of the Thomas H. Lee deal.

19 Right before that deal closed, what, approximately,
20 was the RGHI debt to Refco?

21 A. Approximately 1.1 billion.

22 Q. Did Refco use any of the proceeds from the sale of Thomas
23 H. Lee to pay down some of that debt?

24 A. Yes, it did.

25 Q. How much?

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1 A. Approximately \$700 million through the proceeds and the
2 writeoff of the receivable.

3 Q. And so how much debt was left from RGHI after the
4 closing -- how much debt to Refco?

5 A. Approximately 4 to 500 million.

6 Q. When did you leave Refco?

7 A. Immediately thereafter the closing in August of '04.

8 Q. Why did you leave Refco at that time?

9 A. I left for two reasons. I was having marital issues at
10 that time, for one; and, two, I was not prepared to sign a
11 public registration statement as it related to the bonds that
12 were done in conjunction with the TH Lee sale.

13 Q. Why did you not want to sign a public registration
14 statement?

15 A. I believe there was a greater level of criminal exposure if
16 the Refco fraud was uncovered in a public forum.

17 Q. And so you didn't want your name on something like that?

18 A. No, I did not.

19 Q. What did you get -- what were you paid at the time that you
20 separated from Refco?

21 A. I received a payment of \$46 million.

22 Q. And how was that broken down?

23 A. When you say "broken down"?

24 Q. Did it have components that went into that amount?

25 A. Yes. A component was for the redemption of my payment from

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1 my profit participation plan and the rest was a severance.

2 Q. Mr. Trosten, did there come a time after you left Refco
3 that the fraud at Refco was exposed to the public?

4 A. Yes, it was.

5 Q. When was that?

6 A. October of 2005.

7 Q. And how did you learn about those events?

8 A. I received a call from a friend of mine while fishing, and
9 he advised me that Refco is down 10 points in the public
10 market, stock market.

11 Q. And what happened to Refco in the days that followed that
12 call from your friend?

13 A. In the days that followed Phil Bennett got indicted and the
14 firm later went bankrupt, or filed for bankruptcy.

15 Q. Did you hire a lawyer?

16 A. Yes, I did.

17 Q. And did you decide to meet with the U.S. Attorney's Office?

18 A. Yes, I did.

19 Q. What was your purpose in meeting with the U.S. Attorney's
20 Office?

21 A. I wanted to meet with the U.S. Attorney's Office to provide
22 them with information in the hopes that I would be looked at
23 more as a witness than as a potential target of the U.S.
24 government.

25 Q. And did you soon come to realize that you were in fact a

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1 target?

2 A. Yes, I did.

3 Q. Did you have a lawyer present for those meetings with the
4 U.S. Attorney's Office?

5 A. I did.

6 Q. And did you take part in what we call proffer sessions?

7 A. Yes, I did.

8 Q. What is that term? What is a proffer?

9 A. A proffer is a meeting that in this case myself had with
10 the U.S. government where I have a question-and-answer session
11 and describe my conduct and the conduct of others at Refco as
12 questioned.

13 Q. Is that generally what you did discuss at this proffer
14 session?

15 A. Which proffer session?

16 Q. Well, when was the first one?

17 A. October of 2005.

18 Q. And did you have several over the next months?

19 A. Yes.

20 Q. And on average how long were these meetings?

21 A. Approximately four hours.

22 Q. During these set of sessions, did you have discussions
23 about the crimes you had committed?

24 A. Yes.

25 Q. And did you talk about the crimes that others had committed

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1 with you?

2 A. Yes.

3 Q. Were you eventually offered a cooperation agreement by the
4 government?

5 A. Yes.

6 Q. Approximately how many proffer sessions had you had before
7 that agreement was offered?

8 A. Six or seven.

9 Q. And you said that in the meetings leading up to the
10 offering of that agreement, you discussed with the government
11 not only your own crimes but the crimes of others that had been
12 committed with you at Refco?

13 A. Yes.

14 Q. Did you have discussions with the government about who knew
15 about the Refco hole, the RGHI debt to Refco?

16 A. Yes.

17 Q. Do you recall whose names you mentioned in those proffer
18 sessions?

19 A. I recall some of them, yes.

20 Q. Who were they?

21 A. Myself, Phil Bennett, Sandy Maggio, Dave Weaver.

22 Q. I'm going to interrupt you.

23 Who is Dave Weaver? Just tell us. Some of these are
24 names we haven't heard yet.

25 A. Dave Weaver reported to Sandy Maggio.

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1 Q. OK. Who else?

2 A. Stephen Dispenza.

3 Q. Who was he?

4 A. He reported to Sandy Maggio.

5 Frank Mutterer, who was my controller; Victor Zarate,
6 who was my assistant controller, and there may have been others
7 at Refco.

8 Q. Did you mention the tax partners at Ernst & Young who knew
9 about the hole during these meetings with the government?

10 A. No, I did not.

11 Q. And did you mention Joe Collins in particular the
12 conversation you had had in 2002 about the hole?

13 A. No.

14 Q. Why didn't you mention those three -- roughly three
15 partners at Ernst & Young and Joe Collins in those proffer
16 sessions?

17 A. Because the question was posed to me, or I interpreted it
18 to mean who at Refco knew about the hole and that's how I
19 answered it.

20 Q. So in answering that question, did you give the government
21 at that point anyone's name who was not an owner or employee of
22 Refco?

23 A. No, I did not.

24 Q. During these proffer sessions, did you discuss an
25 arbitration where you had testified?

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1 A. Yes.

2 Q. When was that?

3 A. When was what, Mr. Chernoff?

4 Q. The arbitration.

5 A. It was sometime after I left Refco in 2004.

6 Q. And what did the arbitration relate to?

7 A. It related to someone that was working at Refco that wanted
8 to receive a finder's fee or money from Refco because he
9 believed that he introduced Credit Suisse First Boston to Refco
10 which ultimately led to the sale of Refco to Thomas H. Lee.

11 Q. Did you state in your proffer that you had testified
12 truthfully at that arbitration?

13 A. Yes, I did.

14 Q. And after leaving that meeting with the government, did you
15 do anything to check what you had said?

16 A. Yes, I did.

17 Q. What did you do?

18 A. I had asked for and received the transcript and reread my
19 testimony.

20 Q. Did you realize that your testimony had not in fact been
21 entirely truthful?

22 A. Yes.

23 Q. How had it been false?

24 A. I had made reference to the working capital distribution as
25 cash, cash, the 500 million, when indeed it was not

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1 \$500 million of cash. It was significantly less than that.

2 Q. And so did you bring that false testimony to the
3 government's attention?

4 A. I did.

5 Q. Now, you said that there came a time when you were offered
6 a cooperation agreement after these proffer sessions?

7 A. Yes.

8 Q. And did you accept the proffer agreement -- I'm sorry, the
9 cooperation agreement?

10 A. No, I did not.

11 Q. Why not?

12 A. Because I felt the terms of the agreement as it related to
13 the monies that I was being asked to forfeit was unfair. I
14 felt like I had done legitimate work at Refco. I also did much
15 work that was fraudulent, but I felt like I did do some
16 significant true, real work and wanted to keep some of those
17 funds.

18 Q. And the government obviously did not see it your way?

19 A. That is correct.

20 Q. The cooperation agreement would have required you to plead
21 guilty as well as forfeit money, correct?

22 A. That is correct.

23 Q. And after you turned down that cooperation agreement, what
24 happened in your case?

25 A. I was indicted.

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1 Q. When was that?

2 A. Approximately November of 2006.

3 Q. And so from that point you began to prepare for trial?

4 A. That is correct.

5 Q. Now, at that point in time had Phil Bennett already been
6 indicted?

7 A. Yes.

8 Q. And Tone Grant?

9 A. Yes.

10 Q. Did there come a time in your case when you asked to meet
11 with the government again?

12 A. Yes.

13 Q. When was that?

14 A. In February of 2008.

15 Q. And how did that come about that you made that request?

16 A. I had asked for the request. I had gone through my rights
17 to review the discovery that the government has received. I
18 realized that I'm very likely going to be found guilty and I'm
19 going to be spending a significant period of time in jail.

20 Q. Now, at the point that you asked for that additional
21 meeting with the government, had Phil Bennett by then pled
22 guilty?

23 A. Yes.

24 Q. And was Tone Grant heading to trial?

25 A. Yes.

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1 Q. And by that point had Joe Collins already been indicted?

2 A. Yes.

3 Q. After you met with the government again, were you offered a
4 cooperation agreement?

5 A. Yes.

6 Q. And was that a written agreement?

7 A. Yes.

8 Q. The same requirement that you plead guilty?

9 A. Yes.

10 Q. And the same forfeiture requirements as before?

11 A. Yes.

12 Q. Was that cooperation agreement written?

13 A. Yes.

14 Q. Let me show you what's been marked 3502, for
15 identification.

16 Do you recognize that document?

17 A. I do.

18 Q. What do you recognize it to be?

19 A. This is my cooperation agreement, dated February 20, 2008.

20 MR. CHERNOFF: Your Honor, the government offers
21 3502-2.

22 MR. SCHWARTZ: No objection.

23 THE COURT: Received.

24 (Government's Exhibit 3502-2 received in evidence)

25 BY MR. SCHWARTZ:

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1 Q. And in this cooperation agreement you agreed to plead
2 guilty to the crimes you've told us about?

3 A. Yes.

4 Q. And there is also a schedule at the back of it that sets
5 forth the bank accounts, real property and cars you agreed to
6 forfeit, correct?

7 A. Yes.

8 Q. I want to talk with you a little bit now about some of
9 those assets, and first ask you about your compensation.

10 How did your compensation increase, generally
11 speaking, from the time you joined Refco to the time you left;
12 what were the imagine components?

13 A. The major components was cash. There was a home that I
14 acquired. I got a portion of some stock. I had joint interest
15 in an aircraft with Phil Bennett. And I received, again,
16 significant monies throughout my career culminating in the \$46
17 million payment when I left the firm.

18 Q. You said that you had started out in the low six figures.
19 What was your base salary and bonus at the time that you were
20 CFO in the last year you were CFO, for instance?

21 A. My base salary was a million dollars. I was receiving
22 payments off of the proceeds participation plan. As DF Capital
23 was acquiring its participation right, I was receiving payments
24 from that, which amounted to millions of dollars.

25 Q. And these sums that you were paid were all agreed to by

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1 Phil Bennett?

2 A. That is correct.

3 Q. How did you get him to agree to pay you such extraordinary
4 sums?

5 A. Because I was preparing to do, and did, what my predecessor
6 Steve Rossi would not.

7 Q. Meaning prepare fraudulent financial reports to the
8 auditors?

9 A. Prepare fraudulent reports to the auditors and give
10 presentations and lie to banks, investors, rating agencies,
11 etc.

12 Q. And so it's fair to say you had some leverage over
13 Mr. Bennett because you were doing this for him?

14 A. Yes.

15 Q. You said that the company acquired a house for you?

16 A. Yes.

17 Q. Where was that house, and what did it cost?

18 A. It's in Franklin Lakes, New Jersey, and it cost \$2.8
19 million at the time.

20 Q. And you were given some stock as well?

21 A. I was.

22 Q. What stock were you given?

23 A. It was stock in a private company called Navtec.

24 N-a-v-t-e-c, I believe; it could be t-e-k. I'm not sure.

25 Q. And what about options? Did you also get options while you

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1 were at Refco?

2 A. I did.

3 Q. What is an option? What does that give you the option to
4 do?

5 A. In this case it gave me the option to acquire a piece of
6 Refco.

7 Q. How do you acquire a piece of Refco with options?

8 A. We documented an agreement that said at a certain price I
9 would be able to acquire 2 percent interest in the business.

10 Q. When you received those options, did you backdate them?

11 A. Yes.

12 Q. What does that mean?

13 A. It means that we had the discussions in a particular year
14 but when we did the documentation we documented it as if it
15 happened two years prior.

16 Q. And what did that enable you to do?

17 A. It enabled me to take a -- to reduce the tax liability as
18 it related to this compensation.

19 Q. And so you also committed tax fraud in connection with
20 those options?

21 A. I did.

22 Q. What year was that?

23 A. The option was payable in two years. So it was in 2000 and
24 2001.

25 Q. You said a moment ago that "we" did this. You and who did

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1 this?

2 A. Phil Bennett.

3 Q. When you left Refco you said you received a severance
4 payment and a profits participation plan cash out.

5 You didn't report that money properly on your tax
6 returns for that year either, did you?

7 A. I did not.

8 Q. What did you do on your 2004 tax return that was
9 fraudulent?

10 A. I reported all \$46 million as the sale of my profits
11 participation plan and able to reduce my tax liability.

12 Q. Now, did there come a time in the following year that you
13 actually amended that return?

14 A. I did.

15 Q. What led you to amend the return -- what did you do in the
16 amended return, I should ask first?

17 A. In the amended return I had updated it for a K-1
18 partnership return, but most importantly, I amended the return
19 to break out the components of what was from the profits
20 participation plan and was additional compensation, thereby
21 increasing my tax liability with penalties and interest of
22 approximately \$12 million.

23 Q. And so what led you to amend your return and pay that \$12
24 million in additional taxes?

25 A. Word of Refco had come out about the debt between RGHI and

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1 Refco. I was concerned about my tax return and how I accounted
2 for it and decided to amend it, and then I did so and made the
3 additional payment.

4 Q. Now, in your meetings with the government on this case, did
5 you at some point bring your amended tax return issue to the
6 attention of the prosecutors in this district?

7 A. At some point, yes.

8 Q. And was that only after lawyers for Mr. Collins had
9 subpoenaed you for your tax returns?

10 A. Yes.

11 Q. By 2005 had you paid all the taxes you owed for that income
12 for the severance payment?

13 A. Yes.

14 Q. You mentioned earlier in your testimony that a forfeiture
15 order was put against you at the time you pled guilty?

16 A. Yes.

17 Q. What is a forfeiture order?

18 A. A forfeiture order is meant to represent the amount of loss
19 that was incurred by the victims of the crimes to which I've
20 committed and others.

21 Q. And so that's money you have to pay to the United States?

22 A. Yes.

23 Q. For what purpose?

24 A. My understanding is the government then puts it into a fund
25 so that the victims can receive some of the monies, if not all

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Trosten - direct

1 of the monies, that are being forfeited by myself and others.

2 Q. And what was the total amount of the forfeiture order
3 entered against you?

4 A. \$2.4 billion.

5 Q. And that amount was calculated how?

6 A. It was calculated as the amount of loss that was suffered
7 by the victims, both individuals and institutions, of this
8 crime.

9 Q. When you signed the cooperation agreement and pled guilty,
10 approximately how much cash from your earnings at Refco and
11 elsewhere did you still have left?

12 A. Approximately \$35 to 40 million.

13 Q. And did you agree to forfeit that cash?

14 A. I did.

15 Q. Who did you forfeit it to?

16 A. The United States government.

17 Q. And specifically what arm of the United States government
18 handles forfeiture?

19 A. I don't know if you mean the U.S. Marshals, but I'm not
20 really sure.

21 Q. We'll get to your houses in a moment, but when your houses
22 were seized, that was by the U.S. Marshals?

23 A. Yes.

24 Q. Had you bought several cars with proceeds from Refco?

25 A. Yes.

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1 Q. How many?

2 A. For myself I believe it was five, and there were others for
3 other people.

4 Q. And did you still own any of those cars at the time that
5 you pled guilty?

6 A. May I backtrack for a moment?

7 Q. Go ahead.

8 A. I had bought many cars in my career at Refco, but at the
9 time that this was occurring I had five for myself and then I
10 had others as well.

11 Q. What do you mean you had others as well?

12 A. There were one that I had given to my parents. My fiancée
13 or wife at the time had one. My ex-wife had a car as well.

14 Q. And so did you agree to forfeit any interest you had in
15 those vehicles, too?

16 A. I did.

17 Q. And what about the proceeds from a car you had sold, did
18 you give that to the forfeiture -- did you pay that to the
19 forfeiture order as well?

20 A. I did.

21 Q. What car was that?

22 A. It was an Enzo Ferrari.

23 Q. And what were the proceeds from the sale you had made of
24 the Enzo Ferrari?

25 A. \$870,000.

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1 Q. How many homes did you have an interest in at the time that
2 you pled guilty?

3 A. Four.

4 Q. Where were they and who was using them?

5 A. There were two in Franklin Lakes. I was using one; my
6 ex-wife lives in the other one. My parents were living in a
7 condo in Florida, and I had a residence in Florida.

8 Q. And did your ex-wife dispute the forfeiture of that house?

9 A. Yes.

10 Q. Do you have any interest in the house at this time?

11 A. I do not.

12 Q. And who lives there with your ex-wife, if anyone?

13 A. My son.

14 Q. What about the home that your parents lived in, do you have
15 any interest in that?

16 A. I do not.

17 Q. Did they initially dispute the forfeiture of that house?

18 A. Yes.

19 Q. And you paid for an attorney to help them explore their
20 rights to keep the house?

21 A. That is correct.

22 Q. But what ultimately happened to that house, or that condo?

23 A. My parents agreed to forfeit it to the U.S. government.

24 Q. Now, did there come a time in your case, in your meetings
25 with the government, that you forfeited some additional

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Trosten - direct

1 property?

2 A. Yes.

3 Q. Was that around the time your home in Florida was
4 burglarized?

5 A. Yes.

6 Q. What happened around that time?

7 A. My house was burglarized. They had stolen some cash, some
8 jewelry, some cufflinks. I advised the government. The
9 government asked me some more questions about assets that I
10 had. I identified some wine. I identified rights that I had
11 to a luxury box at Madison Square Garden. I identified a
12 deposit at a social club, and forfeited those as well.

13 Q. And after you had that discussion with the government about
14 the jewelry and these interests in the box and the club and so
15 forth, did you amend this Schedule A that reflects the assets
16 you were forfeiting pursuant to your guilty plea?

17 A. I did.

18 Q. Let me show you what's been marked 3502-2A.

19 And I'll ask you if you recognize this document?

20 A. Thank you.

21 I do.

22 Q. What is 3502-2A?

23 A. This is the revised Schedule A of my forfeiture of what I'm
24 forfeiting to the government.

25 MR. CHERNOFF: The government offers it, your Honor.

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1 MR. SCHWARTZ: No objection.

2 THE COURT: Received.

3 (Government's Exhibit 3502-2A received in evidence)

4 BY MR. CHERNOFF:

5 Q. And after you pled guilty, Mr. Trosten, were you receiving
6 payments in connection with a loan you had made?

7 A. Yes.

8 Q. What was that loan?

9 A. I had made a loan to a synagogue in New Jersey.

10 Q. Why did you make the loan to the synagogue in New Jersey?

11 A. They were expanding and needed some financial support.

12 Q. How much did you loan them?

13 A. \$750,000.

14 Q. And did you ultimately agree to forfeit your right to
15 receive payments from that synagogue as well?

16 A. Yes, I did.

17 Q. Under your cooperation agreement, you pled guilty to
18 several of the counts charged against you in the Indictment
19 which you have described, correct?

20 A. Correct.

21 Q. What's the total maximum possible prison sentence that you
22 would face under all the offenses that you've pled guilty to?

23 A. 85 years.

24 Q. And do you face other potential penalties in addition to
25 forfeiture?

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Trosten - direct

1 A. I do.

2 Q. What are those?

3 A. Restitution and fines.

4 Q. What is restitution?

5 A. Restitution is additional monies that I would be having to
6 remit to give back to the victims of the crime.

7 Q. What is your understanding of what the cooperation
8 agreement that is Exhibit 3502-2 requires you to do?

9 A. It requires me to tell the truth, testify when called upon,
10 and commit no further crimes.

11 Q. And you're testifying here pursuant to that agreement?

12 A. Yes, I am.

13 Q. And have you previously testified as a government witness
14 in a criminal trial of Tone Grant?

15 A. I have.

16 Q. And, by the way, let me show you what's been marked as
17 Government Exhibit 751.

18 Is that a photo of Tone Grant?

19 A. Yes, it is.

20 MR. CHERNOFF: Your Honor, the government offers 751.

21 MR. SCHWARTZ: No objection.

22 THE COURT: Received.

23 (Government's Exhibit 751 received in evidence)

24 BY MR. CHERNOFF:

25 Q. Now, Mr. Trosten, if you abide by the terms of your

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1 cooperation agreement, what it requires of you, what is your
2 understanding of what the government is obligated to do under
3 this written agreement?

4 A. They are required to write a letter detailing my
5 cooperation with the U.S. government and submit it to my
6 sentencing judge.

7 Q. And if the government writes this letter detailing the ways
8 in which you have cooperated, what is your understanding of
9 what the judge would likely do with respect to your sentence at
10 the end of your case?

11 A. Reduce my sentence.

12 Q. Now, under this agreement is the government going to
13 recommend to your sentencing judge a particular sentence?

14 A. No, they are not.

15 Q. And is that stated in your written agreement?

16 A. Yes, it is.

17 Q. Has anyone promised you any particular sentence in your
18 case?

19 A. No.

20 Q. Who will determine your sentence?

21 A. My sentencing judge.

22 Q. And what will the judge who sentences you consider in
23 sentencing you?

24 A. He or she will consider the crimes that I've committed, the
25 amount of loss that was undertaken by the victims of the crimes

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Trosten - direct

1 that I've committed, a report that will be submitted to my
2 sentencing judge by the Probation Department going through, you
3 know, my life history. They will take into account the letter
4 that the government will be writing pursuant to my cooperation
5 agreement, and take into account where I am in my life today
6 and will take into account any letters that may be written both
7 for or against me at the time of sentencing.

8 MR. CHERNOFF: May I have one moment, your Honor?

9 THE COURT: Yes, sir.

10 (Pause)

11 THE COURT: I think everybody in America has a cold.

12 BY MR. CHERNOFF:

13 Q. Mr. Trosten, one final subject.

14 When was the last time you spoke with Joseph Collins,
15 do you recall it?

16 A. I do.

17 Q. When, approximately, was that?

18 A. October of 2005.

19 Q. And how do you remember that?

20 A. Because Refco had just begun having these disclosures come
21 out, and I called Joe to look for a referral for a lawyer.

22 Q. You said you called him to ask for a referral for a lawyer?

23 A. Yes.

24 Q. Did you tell him what kind of a lawyer you wanted to hire?

25 A. I did.

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Trosten - direct

1 Q. And?

2 A. I asked for a criminal attorney.

3 Q. And what did Mr. Collins say in response?

4 A. He said that he'd ask around and get back to me.

5 Q. Did he get back to you?

6 A. Yes.

7 Q. And did he give you a referral for an attorney?

8 A. Yes.

9 Q. Did you take his advice and hire an attorney he

10 recommended?

11 A. Yes.

12 MR. CHERNOFF: No further questions, your Honor.

13 THE COURT: Thank you.

14 Cross-examination, counsel.

15 CROSS-EXAMINATION

16 BY MR. SCHWARTZ:

17 Q. Good morning, Mr. Trosten.

18 A. Good morning.

19 Q. Now, when you called Mr. Collins for a recommendation for

20 an attorney, there was no secret that there was a criminal

21 investigation of Refco going on, correct?

22 A. That is correct.

23 Q. Phillip Bennett had already been arrested, correct?

24 A. That is correct.

25 Q. And that had been all over the papers, correct?

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Trosten - cross

1 A. May I ask you to speak up? I'm having a hard time hearing
2 you.

3 Q. That had been in the newspapers, correct?

4 A. That is correct.

5 Q. And you called Mr. Collins; and he was a lawyer you knew,
6 correct?

7 A. That is correct.

8 Q. You didn't know where to find a criminal attorney, correct?

9 A. That is correct.

10 Q. And you thought that he might be able to recommend one to
11 you, correct?

12 A. That is correct.

13 Q. So you called him and asked him for that, correct?

14 A. That is correct.

15 Q. And you discussed the fraud with him on that phone call,
16 correct?

17 A. I did not.

18 Q. And he got back to you, correct?

19 A. That is correct.

20 Q. And he recommended you to a criminal attorney, correct?

21 A. That is correct.

22 Q. And then you researched the attorney after he made the
23 recommendation?

24 A. I made the phone call shortly thereafter.

25 Q. Did you look into the attorney's reputation?

Caidcoll

Trosten - cross

1 A. Yes.

2 Q. And you learned that he was one of the most highly
3 reputable criminal attorneys in New York, is that correct?

4 A. That is correct.

5 Q. A man of great honesty, correct?

6 A. Yes.

7 Q. And enormous integrity, correct?

8 A. That is correct.

9 Q. And in your experience with him, he was a man of honesty
10 and integrity, correct?

11 A. That is correct.

12 Q. How long after you hired him were you in the United States
13 Attorney's office confessing your crimes?

14 A. May I ask you to repeat the question, please?

15 Q. How long after you hired him were you in the U.S.
16 Attorney's Office confessing your crimes?

17 A. Within weeks, if not days.

18 Q. Within weeks, if not days, the attorney that Joseph Collins
19 recommended to you took you to the United States Attorney's
20 office to tell them everything you knew about the fraud,
21 correct?

22 A. Correct.

23 Q. Now, sir, you worked with Mr. Collins for a long period of
24 time, is that correct?

25 A. That is correct.

Caidcoll

Trosten - cross

1 Q. And I believe you testified on direct that there were days
2 when you had numerous conversations with him?

3 A. That is correct.

4 Q. And over the period that you worked with him, is it fair to
5 say you had at least hundreds of conversations with him?

6 A. That is correct.

7 Q. And possibly thousands?

8 A. Possibly.

9 Q. And you met with him often, correct?

10 A. Not in person.

11 Q. So the conversations were mostly on the phone?

12 A. Yes.

13 Q. And out of the hundreds and possibly thousands of
14 conversations with him, you had related just a few here today
15 in the last few days, correct?

16 A. That is correct.

17 Q. You related a single conversation where you called him and
18 asked him to send you documents on the back-to-back loans in
19 2001, correct?

20 A. That is correct.

21 Q. You related a conversation -- it may have been one or
22 two -- where you expressed to him concerns about the structure
23 of the Proceeds Participation Agreement, correct?

24 A. That is correct.

25 Q. And you testified about a conversation in which you claim

Caidcoll

Trosten - cross

1 you told him there were \$700 million in intercompany debt at
2 Refco, correct?

3 A. Correct.

4 Q. Of possibly thousands of conversations, you related to the
5 jury just three over these two days, correct?

6 A. Correct. There may have been one more but ...

7 Q. You never had a conversation with Mr. Collins where you
8 told him there was \$1.1 billion of intercompany debt at the
9 time you made the deal, correct?

10 A. That is correct.

11 THE COURT: Mr. Schwartz, would you keep your voice
12 up?

13 MR. SCHWARTZ: I apologize.

14 THE COURT: The problem is both of you are too tall
15 for the microphone, but keep your voice up, please.

16 MR. SCHWARTZ: You have to order a tall microphone.

17 THE COURT: I know.

18 MR. SCHWARTZ: I don't want to increase the deficit,
19 your Honor.

20 THE COURT: Thank you. We appreciate that.

21 BY MR. SCHWARTZ:

22 Q. You never had a conversation where you told him that the
23 \$500 million in excess cash was really not excess cash
24 belonging to the company, correct?

25 A. That is correct.

Caidcoll

Trosten - cross

1 Q. And you never had a conversation with him where you told
2 him the opinions you testified to here about the meaning of
3 representations and warranties in the EPMA, correct?

4 A. That is correct.

5 Q. And you never had a conversation with him in which you told
6 him there's a hole at Refco and here is how it has been
7 created, correct?

8 A. That is correct.

9 Q. Now, let's discuss the creation of the hole for a moment.

10 You testified there were several ingredients that went
11 into that, correct?

12 A. Correct.

13 Q. The first was customer losses?

14 A. That is correct.

15 Q. And those were losses that would be moved up to RGHI,
16 correct?

17 A. Correct.

18 Q. And RGHI -- it would look on Refco's books as if RGHI had
19 borrowed money from it, correct?

20 A. That is correct.

21 Q. So the losses would go up to RGHI, and in exchange there
22 would be an IOU recorded on the books of Refco, correct?

23 A. That is correct.

24 Q. And these came about because customers had something called
25 margin, is that right?

Caidcoll

Trosten - cross

1 A. That is right.

2 Q. Margin is where you buy a stock or a commodity, the
3 customer, in part, borrows the money from the broker, correct?

4 A. That is correct.

5 Q. So customers would borrow money from Refco to enable them
6 to buy commodities in their accounts, correct?

7 A. That is correct.

8 Q. And then the price of what they owned would drop on the
9 market, correct?

10 A. That is correct.

11 Q. And somebody was required to pay for the loss that they had
12 incurred, correct?

13 A. That is correct.

14 Q. So Refco would call the margin; they would say to the
15 customer send the money over, correct?

16 A. That is correct.

17 Q. The money you had borrowed?

18 A. Correct.

19 Q. And sometimes they wouldn't have it, correct?

20 A. That is correct.

21 Q. So Refco would have to dig into its own pocket, correct?

22 A. Correct.

23 Q. And it would have to pay for the losses, correct?

24 A. Correct.

25 Q. And then those losses were now loanable to Refco, correct?

Caidcoll

Trosten - cross

1 A. At that moment, correct.

2 Q. And so what Refco would do was move them upstairs, sell
3 them, essentially, to the parent, correct?

4 A. That is correct.

5 Q. And get -- and give the parent a loan, in which it would
6 use to buy them, correct?

7 A. Correct.

8 Q. And the parent would give the IOU, correct?

9 A. Correct.

10 Q. And that IOU would be on the books of Refco as an asset of
11 Refco, correct?

12 A. That is correct.

13 Q. And it would make Refco look richer than in fact it was,
14 correct?

15 A. That is correct.

16 Q. And the hole kept getting deeper as customers lost money,
17 correct?

18 A. That is correct.

19 Q. And you never had a single conversation with my client in
20 which you told him that you were transferring these obligations
21 to the parent, RGHI, in exchange for an IOU, correct?

22 A. That is correct.

23 Q. Now, another thing you did that deepened the hole was you
24 would shift expenses, correct?

25 A. That is correct.

Caidcoll

Trosten - cross

1 Q. So Refco would have to spend the money, correct?

2 A. That is correct.

3 Q. To buy something for the office, for example?

4 A. Correct.

5 Q. And that would normally show on the books as money that
6 came out of Refco's pocket, right?

7 A. Correct.

8 Q. And it would reduce the net worth of Refco, correct?

9 A. Correct.

10 Q. Because an expense brings down the value of the company,
11 correct?

12 A. That is correct.

13 Q. And so those expenses would be sold upstairs to the parent
14 as well, correct?

15 A. That is correct.

16 Q. And the parent would give the same kind of IOU, correct?

17 A. Correct.

18 Q. And it would be recorded -- the expenses would now not look
19 like expenses on Refco's books but they would be an asset,
20 correct?

21 A. That is correct.

22 Q. And you didn't have a single conversation with Joseph
23 Collins regarding the transferring of expenses to RGHI or any
24 of the other parents -- or any of the affiliates in exchange
25 for that IOU, correct?

Caidcoll

Trosten - cross

1 A. That is correct.

2 Q. So now you had a hole, right? And the hole was a debt that
3 was owed by RGHI to Refco, correct?

4 A. That is correct.

5 Q. And like any other debt, interest was accruing on it,
6 correct?

7 A. Correct.

8 Q. So on the books of Refco, RGHI not only owed for the
9 principal of the loans that had been made to it, it owed
10 interest, right?

11 A. Correct.

12 Q. And to make Refco look even better than it looked, you
13 raised the interest rate, right?

14 A. Correct.

15 Q. And that interest as it accrued you were allowed to take as
16 income of Refco, correct?

17 A. That is correct.

18 Q. Even though you believed there was no realistic chance of
19 collecting it from RGHI, correct?

20 A. Correct.

21 Q. And at one point you increased the interest rate, right?

22 A. That is correct.

23 Q. To make it look even better?

24 A. That is correct.

25 Q. And you never had a conversation with Joseph Collins about

Caidcoll

Trosten - cross

1 any of that, correct?

2 A. When you say "any of that"?

3 Q. You never had a conversation in which you told him that we
4 are manipulating the net worth of Refco by increasing the
5 interest rate.

6 A. That is correct.

7 Q. Now, you testified for over two -- for almost two days on
8 direct examination, and you went through documents. You were
9 shown a lot of documents, right?

10 A. Correct.

11 Q. You were shown a lot of notes, correct?

12 A. Yes.

13 Q. And there was only one conversation at all that you claim
14 you ever had with Mr. Collins about the hole, correct?

15 A. That is correct.

16 Q. And that was the ENY letter?

17 A. It related to the ENY call and letter, yes.

18 Q. We'll get back to that.

19 Mr. Trosten, do you consider yourself an accomplished
20 liar?

21 A. How would you define "accomplished liar"?

22 Q. Someone who was successful for many years telling thousands
23 of lies.

24 A. Yes.

25 Q. You lied to many people over many occasions?

Caidcoll

Trosten - cross

1 A. That is correct.

2 Q. In fact, you were a professional liar, correct?

3 A. How would you define "professional liar"?

4 Q. Someone who gets paid in part to tell lies.

5 A. That is correct.

6 Q. You were responsible for the financial statements at Refco,
7 correct?

8 A. That is correct.

9 Q. And every year that you were responsible for the financial
10 statements of Refco, they were false, correct?

11 A. That is correct.

12 Q. You knew they were false, correct?

13 A. That is correct.

14 Q. And you knew that banks were relying on them, correct?

15 A. Correct.

16 Q. You knew that the regulators had them, correct?

17 A. Correct.

18 Q. You knew that potential buyers were looking at them,
19 correct?

20 A. Correct.

21 Q. And investment bankers, correct?

22 A. That is correct.

23 Q. And you lied to the accountants who audited the financial
24 statements, correct?

25 A. That is correct.

Caidcoll

Trosten - cross

1 Q. First it was Arthur Andersen and then it was Grant
2 Thornton, right?

3 A. That is correct.

4 Q. And they would spend weeks at Refco every year trying to
5 make sure that the financial statements were accurate, correct?

6 A. That is correct.

7 Q. And anytime they asked you a question that came close to
8 the hole, you lied to them, correct?

9 A. That is correct.

10 Q. And you did that regularly?

11 A. When you say "regularly," every time it was asked of me,
12 that is correct.

13 Q. And it was critical to the fraud that you lie to them
14 successfully?

15 A. That is correct.

16 Q. And you gave them false schedules to back up the numbers
17 that you had put in the financial statements, right?

18 A. That is correct.

19 Q. And you lied to them in the annual meeting that they would
20 have with you to go over the audit, right?

21 A. That is correct.

22 Q. Now, the chief auditor to whom you lied was a man named
23 Mark Ramler, correct?

24 A. That is correct.

25 Q. And you actually considered him a friend, correct?

Caidcoll

Trosten - cross

1 A. Yes.

2 Q. And you lied to him year after year about things that were
3 central to the work your friend was doing, correct?

4 A. That is correct.

5 Q. In fact, by lying to him you knew you were putting him in
6 harm's way, correct?

7 A. That is correct.

8 Q. Because as a result of your lies he was giving a positive
9 opinion on your financial statements, correct?

10 A. That is correct.

11 Q. And he was a man of significant reputation, correct?

12 A. That is correct.

13 Q. And he was a sophisticated professional, correct?

14 A. In my opinion.

15 Q. And in your opinion he was a very good accountant, correct?

16 A. Correct.

17 Q. And as a result of your lies he was unable to uncover the
18 fraud, correct?

19 A. That is correct.

20 Q. And he would also have meetings with Mr. Bennett?

21 A. He would.

22 Q. And Mr. Bennett would lie to him anytime he got close to
23 the hole, correct?

24 A. That is correct.

25 Q. And you came to understand exactly how you could

Caidcoll

Trosten - cross

1 successfully lie to him, right?

2 A. I did.

3 Q. You came to understand how he did his work and what kinds
4 of lies would actually work with him, right?

5 A. That is correct.

6 Q. And you began to feel more and more confident, because you
7 knew how he worked, that the way you told him lies would be
8 successful, correct?

9 A. That is correct.

10 Q. And then there came a time where he switched accounting
11 firms, right?

12 A. Yes.

13 Q. Arthur Andersen collapsed, right?

14 A. Correct.

15 Q. And he went to Grant Thornton?

16 A. Yes, he did.

17 Q. And you had to consider whether to bring the Refco work to
18 Grant Thornton, right?

19 A. That is correct.

20 Q. And because you knew the way he worked and the way you
21 could successfully lie to him, you moved the work over to Grant
22 Thornton, right?

23 A. That is correct.

24 Q. Because whatever you were doing in the past had worked and
25 you felt it would continue in the future?

Caidcoll

Trosten - cross

1 A. Correct.

2 Q. And so now you put his new firm in harm's way as well?

3 A. Yes.

4 Q. And when you were considering whether to hire a new
5 accountant when you went to Grant Thornton, you didn't want to
6 take the risk that somebody with different ways of practicing
7 might actually uncover the fraud, right?

8 A. That's correct.

9 Q. Because you knew that he -- you could fool him, right?

10 A. Correct.

11 Q. And he never found out about the fraud until after the
12 collapse of Refco, is that right?

13 A. That's my understanding.

14 Q. For a long time you lied to Ernst & Young, correct?

15 A. Regarding?

16 Q. Ernst & Young were your tax accountants?

17 A. That's correct.

18 Q. Did you lie to them?

19 A. Yes.

20 Q. They also had a fine reputation, correct?

21 A. Yes.

22 Q. And, by the way, the fact that these accountants had good
23 reputations was very important to Refco, right?

24 A. Yes.

25 Q. Because it made Refco look better in the eyes of the rest

Caidcoll

Trosten - cross

1 of the world, correct?

2 A. That's my opinion, yes.

3 Q. They prepared your taxes, Ernst & Young, right, the firm's?

4 A. Yes.

5 Q. And they relied on you to tell them the truth, correct?

6 A. Correct.

7 Q. And you lied?

8 A. Correct.

9 Q. You lied to investment bankers, correct?

10 A. Yes.

11 Q. You testified about Allen & Company. That is the firm you
12 retained in 2001. Did you lie to them?

13 A. Yes, I did.

14 Q. They were a highly reputable investment banker, correct?

15 A. Yes.

16 Q. And then you -- in 2003, you went a couple of steps better
17 and you hired Credit Suisse First Boston, correct?

18 A. That is correct.

19 Q. They were one of the premier investment banks in the world,
20 correct?

21 A. That is my understanding, correct.

22 Q. And you knew that by Refco hiring them to sell the company,
23 it gave instant credibility to Refco in the marketplace,
24 correct?

25 A. That was my belief and understanding, correct.

Caidcoll

Trosten - cross

1 Q. Because of their incredible reputation, correct?

2 A. Correct.

3 Q. And the firms that came to look at Refco at that time were
4 actually major firms, correct?

5 A. That is correct.

6 Q. You told us about Thomas H. Lee, right?

7 A. Yes.

8 Q. Bain Capital was another?

9 A. Yes.

10 Q. And they came, you thought in part, because of the name
11 Credit Suisse First Boston, isn't that right?

12 A. It is.

13 Q. You lied to them, correct?

14 A. I did.

15 Q. We saw documents, and we looked at them again yesterday,
16 where their name is on the front page, right?

17 A. Yes.

18 Q. And those documents were riddled with lies that you had
19 told them, correct?

20 A. Myself and others, correct.

21 Q. Refco had a revolving line of credit with J.P. Morgan,
22 right?

23 A. Correct.

24 Q. That means that if Refco needed money on a short-term
25 basis, J.P. Morgan would make it available to them, correct?

Caidcoll

Trosten - cross

1 A. That is correct.

2 Q. And that is also a bank of premier international
3 reputation, correct?

4 A. Correct.

5 Q. And the fact that they were lenders to Refco made Refco
6 look good, correct?

7 A. Correct.

8 Q. And you lied to them?

9 A. Yes.

10 Q. And you lied to all the bidders who came to look at Refco?

11 A. Yes.

12 Q. You lied to the rating agencies that rated Refco, correct?

13 A. Correct.

14 Q. Who were they, by the way?

15 A. Fitch. I believe, Moody's. I don't recall if S & P looked
16 at it, I don't remember.

17 Q. Well, Fitch and Moody's are two of the three major credit
18 rating agencies in the world, correct?

19 A. Correct.

20 Q. And they gave Refco good ratings, correct?

21 A. Correct.

22 Q. And because the name Fitch and Moody's were on those
23 ratings, Refco looked good, correct?

24 A. Correct.

25 Q. And you lied to them?

Caidcoll

Trosten - cross

1 A. Correct.

2 Q. And you were paid to lie?

3 A. Correct.

4 Q. In fact, you were made CFO in order to lie, correct?

5 A. I don't know if I was made CFO in order to lie.

6 Q. Well, let's discuss that.

7 Your predecessor was Steve Rossi, right?

8 A. Not as CFO.

9 Q. What was his job?

10 A. He was the controller. Phil Bennett was the CFO and CEO.

11 Q. You were made controller in order to lie, correct?

12 A. Correct.

13 Q. And then you were made CFO later on because you were a good
14 liar, right?

15 A. Correct.

16 Q. So Mr. Rossi, your predecessor as controller, you testified
17 on direct he was becoming increasingly uncomfortable, right?

18 A. Correct.

19 Q. Isn't the fact that what he told you is I don't want to lie
20 anymore?

21 A. That's not what he told me.

22 Q. That's what you understood him to be saying?

23 A. Correct.

24 Q. Because he had been lying to cover up the hole?

25 A. Correct.

Caidcoll

Trosten - cross

1 Q. And rather than continue to lie, he left the company?

2 A. That is correct.

3 Q. And you found an opening for yourself, is that right?

4 A. That is right.

5 Q. And you knew that you had enormous financial leverage,
6 correct?

7 A. Correct.

8 Q. That's because Phil Bennett needed a liar, right?

9 A. Correct.

10 Q. And, by the way, at this time before 1999 -- what year did
11 you become controller?

12 A. I became Senior Vice President of Finance in 1999.

13 Q. At the time Rossi was doing his lying, Tom Dittmer was the
14 principal of the company, right, as a shareholder?

15 A. For part or most of his tenure, yes.

16 Q. And some of the hole had been created by his trading,
17 right?

18 A. Yes.

19 Q. He did what you call proprietary trading, right?

20 A. Yes.

21 Q. And he had losses, right?

22 A. Correct.

23 Q. And the losses that he had went right into the hole, right?

24 A. I can't speak for all of them but I do know of some, yes.

25 Q. He was one of the creators of the hole, right?

Caidcoll

Trosten - cross

1 A. Correct.

2 Q. Phil Bennett was another creator of the hole, right?

3 (Pause)

4 Phil Bennett was another one of the creators of the
5 hole?

6 A. Yes.

7 Q. So Rossi leaves and you have a conversation with Bennett
8 about a new job, right?

9 A. Correct.

10 Q. And you entered into an agreement with Mr. Bennett, right?

11 A. I did.

12 Q. And you put that agreement in writing, correct?

13 A. Yes.

14 Q. Let me show you what's been marked as Defendant's Exhibit
15 115, for identification.

16 That's the agreement that you had with Mr. Bennett,
17 right?

18 A. I just need a half a moment.

19 (Pause)

20 Yes, it is.

21 MR. SCHWARTZ: We offer it.

22 MR. CHERNOFF: No objection.

23 THE COURT: Received.

24 (Defendant's Exhibit 115 received in evidence)

25 MR. SCHWARTZ: Can we put 115 on the screen, please?

Caidcoll

Trosten - cross

1 Q. So this is in the form of a letter to you from Phil
2 Bennett, right?

3 A. That is correct.

4 Q. And Mr. Bennett signed the letter, correct? If you go to
5 the next page.

6 A. That is correct.

7 Q. And there are some cc's.

8 One is Tone Grant, correct?

9 A. Correct.

10 Q. Who is Edwin Cox?

11 A. Ed Cox at one point was the Chairman of Refco.

12 Q. He was put there by Mr. Dittmer, right?

13 A. That's my understanding, yes.

14 Q. And who is William Graham?

15 A. Bill Graham worked with Ed Cox.

16 Q. And he was put there by Mr. Dittmer, correct?

17 A. That's my understanding.

18 Q. They were Mr. Dittmer's eyes and ears of the company,
19 correct?

20 A. That is also my understanding.

21 Q. So they knew about this agreement that you had with
22 Bennett, right?

23 A. I don't know if they received this or not.

24 Q. So let's go to the first paragraph, please.

25 It says, "I am taking the opportunity to confirm our

Caidcoll

Trosten - cross

1 recent discussions now that we have formalized your promotion
2 to Senior Vice President - Finance and Administration."

3 Those discussions were discussions in which and
4 Bennett sat down and you agreed to do whatever you had to do to
5 continue the fraud, right?

6 A. That is correct.

7 Q. How old were you?

8 A. At this time 29/30.

9 Q. How old were you when you came to the company?

10 A. 27.

11 Q. How much were you making up until the time that Mr. Rossi
12 left?

13 A. When Steve left, I had a base salary I believe of \$250,000,
14 and my bonuses I don't recall.

15 Q. So paragraph 1, your base salary is immediately increased
16 to a half a million dollars, correct?

17 A. Correct.

18 Q. And paragraph 2, you're getting a \$475,000 -- you're
19 getting \$475,000 for the previous six months, right?

20 A. That is correct.

21 Q. In paragraph 3, you're being promised a further bonus
22 payment of a minimum of \$250,000, payable on the following
23 June 30, correct?

24 A. That is correct.

25 Q. And then in paragraph 4, it says, "You will receive such

Caidcoll

Trosten - cross

1 additional compensation, which net of the effective rate of the
2 taxpayer will retire any advances made previously to you."

3 Let's dissect that.

4 Prior to this you had borrowed \$625,000 from the
5 company, right?

6 A. That is correct.

7 Q. And what Mr. Bennett is telling you is forget the loan,
8 we're going to write it off, right?

9 A. Yes.

10 Q. And we're going to give you enough money so that you can
11 pay taxes on the income because of the writeoff, right?

12 A. That is correct.

13 Q. Paragraph 4 was worth a million bucks to you, right?

14 A. Approximately.

15 Q. So you went from \$250,000 prior to July 1999 to this deal
16 on July 16, 1999, correct?

17 A. That's correct.

18 Q. That was a pretty good deal, right?

19 A. Yes.

20 Q. Not good enough, correct?

21 A. No.

22 Q. Because you went back to Mr. Bennett just a few months
23 later and you said, Phil, I need more; correct?

24 A. No, I did not say that to Phil.

25 Q. In substance you didn't say that to Phil?

Caidcoll

Trosten - cross

1 A. In substance I did go back and ask for more money, yes.

2 Q. You just didn't use the words that I said, correct?

3 A. Correct.

4 Q. But there was no question in your mind that you were
5 entitled to more money, correct?

6 A. I don't know if I would say entitled but that I would
7 receive it.

8 Q. Well, there was no question in your mind that even though
9 you had just gotten a sweet deal in Defendant's Exhibit 115,
10 you still had leverage with Mr. Bennett, right?

11 A. Correct.

12 Q. Because he needed a liar in your job?

13 A. That is correct.

14 Q. And so you went back to him and in fact you exercised your
15 leverage, correct?

16 A. Yes, I did.

17 Q. And he gave you even a sweeter deal, is that right?

18 A. That is correct.

19 Q. I show you what's been marked as Defendant's Exhibit 116,
20 for identification.

21 That's the new deal, right?

22 A. That is correct.

23 MR. SCHWARTZ: We offer it.

24 MR. CHERNOFF: No objection.

25 THE COURT: Received.

Caidcoll

Trosten - cross

(Defendant's Exhibit 116 received in evidence)

MR. SCHWARTZ: Could we put it up, please.

Q. This was only four months after the sweet deal we just saw, right?

A. Correct.

Q. So let's look at what is said here.

"I was quite pleased" -- this is from you this time to Mr. Bennett, right?

A. Correct.

Q. By e-mail?

A. I don't recall.

Q. It appears to be the format of an e-mail, is that correct, or a memo?

A. A memo, yes.

Q. You have no doubt that you sent it to him, right?

A. No, I do not.

Q. "I was quite pleased with, what I felt, was an open and fair discussion regarding our collective commitment to the ongoing success of Refco and our collective roles in ensuring that success."

Now, what you meant by that was we had sat for a conversation and I'm ready to keep lying for you, right?

A. That is correct.

(Continued on next page)

CAIPCOL2

Trosten - cross

1 BY MR. SCHWARTZ:

2 Q. And then there are terms of the new agreement, right?

3 A. Correct.

4 Q. Paragraph 1, it's going to be a three-year agreement,
5 correct? Can we highlight?

6 A. Yes.

7 Q. Paragraph 2, you're going to keep getting the \$500,000 a
8 year, right?

9 A. Correct.

10 Q. Paragraph 3 are guaranteed bonuses, right?

11 A. Correct.

12 Q. You're going to get 250,000 guaranteed in each of the
13 following three Aprils?

14 A. That is correct.

15 Q. Paragraph 4 is they're going to give you a house, right?

16 A. They were going to acquire a house, correct.

17 Q. They're going to acquire a house. You later got that
18 house, right?

19 A. That is correct.

20 Q. We'll come back to that. "A corporate residence will be
21 acquired by Refco to be utilized by my wife and I. Refco will
22 be responsible for the taxes and furnishing the home as deemed
23 appropriate for a residence of this stature."

24 Would you tell us, please, what that means, "deemed
25 appropriate for a residence of this stature"?

CAIPCOL2

Trosten - cross

1 A. It was meant to say that there was going to be high-end
2 furniture for our home, which is a high-end home.

3 Q. In fact, further down in the paragraph, we see that you're
4 looking for a house between 2.1 and \$3.2 million, correct?

5 A. Correct.

6 Q. And this is in 1999, not in 2012, right?

7 A. That is correct.

8 Q. And then, paragraph 5, you were getting another bonus,
9 right?

10 A. Correct.

11 Q. A million dollars, correct?

12 A. That is correct.

13 Q. That's in addition to all the quarter-million-dollar
14 bonuses, right?

15 A. It is in 2002.

16 Q. Paragraph 6 said -- The company was going to acquire the
17 house for you. Paragraph 6 gave you an option to buy the house
18 from the company for \$500,000, right?

19 A. Correct.

20 Q. So the way it was contemplated is the company would spend
21 2.1 to \$3.2 million on a house, right?

22 A. Right.

23 Q. Furnish it as appropriate for a house of that stature,
24 correct?

25 A. Correct.

CAIPCOL2

Trosten - cross

1 Q. You could give them a half million dollars and get the
2 whole lot, right, the house and the furniture?

3 A. That is correct.

4 Q. But, in fact, that's not what happened, right?

5 A. No, it is not.

6 Q. You didn't have to pay \$500,000 ultimately to get the
7 house, right?

8 A. No, I did not.

9 Q. We'll come back to that. How much did they pay for the
10 house, by the way, Refco?

11 A. 2.8 million.

12 Q. Turn to Paragraph 9. Now, in addition to the vacation you
13 were entitled to, Mr. Bennett now agreed to give you a month of
14 mental leave each year from the company, correct?

15 A. Correct.

16 Q. What is mental leave?

17 A. Just taking a leave of absence away from the company.

18 Q. Did you find lying to be stressful?

19 A. Yes.

20 Q. So you thought, at this point, you might need a month every
21 year to kind of regroup before coming back to lie again, right?

22 A. That is right.

23 Q. Now, let's talk about how you ended up buying the house.

24 Is it fair to say that you and Mr. Bennett created a deal that,
25 in one fell swoop, gave you millions of dollars of money, a

CAIPCOL2

Trosten - cross

1 house and committed a tax fraud?

2 A. Yes.

3 Q. Let me show you Defense Exhibits 118 and 119 for
4 identification. These are the documents that constituted that
5 new deal, right?

6 A. Yes.

7 MR. SCHWARTZ: We offer them.

8 MR. CHERNOFF: No objection.

9 THE COURT: Received.

10 (Defendant's Exhibits 118 and 119 received in
11 evidence)

12 Q. You had an idea about how you might be able to get this
13 house, right?

14 A. Yes.

15 Q. And you sat down with Phil Bennett and you said to him,
16 Here's my idea, Phil; what do you think? Correct?

17 A. Correct.

18 Q. And what resulted were these documents, right?

19 A. That is correct.

20 Q. Let's take a look at them. The first one is called Option
21 Agreement. Can you tell us, sir, what an option is?

22 A. An option is the right to purchase something in the future
23 at a fixed price.

24 Q. So it means if I pay you a certain amount of money today,
25 what's that called? That's the purchase price?

CAIPCOL2

Trosten - cross

1 A. That's the purchase price.

2 Q. Purchase price for the option?

3 A. Correct.

4 Q. I can buy some asset you have at a later date for a price
5 we decide today, correct?

6 A. That's correct.

7 Q. And that's called the strike price, right?

8 A. Yes.

9 Q. So if I want to purchase the binder that's sitting in front
10 of you tomorrow for \$5, I can -- you and I can make a deal
11 where I pay you 50 cents a day for that right, correct?

12 A. Correct.

13 Q. And then tomorrow I'll be able, if I want to, to purchase
14 the binder for \$5, correct?

15 A. That is correct.

16 Q. And if the binder has increased in value overnight, I can
17 make some money, correct?

18 A. That is correct.

19 Q. So you entered an option agreement with Mr. Bennett to buy
20 stock of Refco, correct?

21 A. Correct.

22 Q. That's Exhibit 118?

23 A. Yes.

24 Q. Except you didn't enter it at the time, right? It wasn't
25 today, it wasn't when you were discussing it with Mr. Bennett,

CAIPCOL2

Trosten - cross

1 right?

2 A. This option agreement was about the time that we were
3 talking about it with Mr. Bennett.

4 Q. You were talking about it with Mr. Bennett in October 2000,
5 correct?

6 A. Correct.

7 Q. What's the date of the option agreement?

8 A. July of '98.

9 Q. It was back-dated, right?

10 A. Correct.

11 Q. It's a fraud, right?

12 A. Correct.

13 Q. But you wanted it in the files of Refco so you could
14 justify getting the house, right?

15 A. Yes.

16 Q. And so that you could justify the tax fraud you were about
17 to commit?

18 A. That's correct.

19 Q. So you went -- You went to the -- You decided to draw up
20 legal documents on your own in order to create this fraud,
21 right?

22 A. That is correct.

23 Q. Let's see what the terms are. Right at the top it says
24 Refco confirms that it's granting you an option to purchase
25 2 percent of the company, right?

CAIPCOL2

Trosten - cross

1 A. That's correct.

2 Q. That means that you're going to pay them something today
3 for a right to buy 2 percent at sometime in the future for a
4 fixed price?

5 A. Correct.

6 Q. And the "today" here is July 1998?

7 A. On the agreement, that's right.

8 Q. On the agreement, correct?

9 A. Correct.

10 Q. Anybody seeing it would think this option had been granted
11 in July 1998, unless you told them the truth?

12 A. That's correct.

13 Q. And the option in paragraph A says that you will be able to
14 pay \$8,450,400 in order to buy that stock, correct?

15 A. Did you say 8,450,000 --

16 Q. Yes.

17 A. -- \$400? Yes, that's correct.

18 Q. And Paragraph 2 says that if you pay that money anytime
19 before July 21, 2002, that's good enough; that's the strike
20 price, right?

21 A. Correct.

22 Q. And you have until July 2002 to make the payment and get
23 2 percent of the option, right?

24 A. Correct.

25 Q. And then it says in Paragraph C -- I'm sorry. When I said

CAIPCOL2

Trosten - cross

1 paragraph 2, I meant paragraph B.

2 In Paragraph C it says that the option payment is
3 \$300,000, correct?

4 A. Correct.

5 Q. That means you were supposed to pay \$300,000 for this
6 right, correct?

7 A. That's correct.

8 Q. You never did that, right?

9 A. I did do that.

10 Q. You did do that. You paid that in 2000 for the right that
11 it looked like you acquired in 1998?

12 A. That's correct.

13 Q. It all got washed out at the end, right? We'll come back.
14 And then paragraph E says that the company has the unilateral
15 right to repurchase the option at any time prior to its
16 expiration for a mutually agreed consideration to be
17 negotiated, correct?

18 A. Correct.

19 Q. That meant that somebody looking at this agreement sees the
20 company can buy you out of your right, correct?

21 A. Correct.

22 Q. But a critical piece of the deal was that you and
23 Mr. Bennett had already decided how much the company was going
24 to pay you to buy you out of that right, correct?

25 A. That is correct.

CAIPCOL2

Trosten - cross

1 Q. That's Exhibit 119, right?

2 A. That is correct.

3 Q. If we can put it up.

4 This is a letter from you -- from Mr. Bennett to you,
5 correct?

6 A. Correct.

7 Q. With "agreed Robert Trosten" at the bottom, right?

8 A. Yes.

9 Q. And this letter is dated October 25, 2000, correct?

10 A. Correct.

11 Q. But it was all part of the same discussion with Mr. Bennett
12 in that month of October, correct?

13 A. That is correct.

14 Q. He's essentially -- Virtually at the same time you're
15 signing the option agreement dated October 28th -- I'm sorry,
16 dated July 28, 1998, to buy stock in the company in the future,
17 he's agreeing already to buy you out, correct?

18 A. That is correct.

19 Q. And he's agreeing in the second paragraph to pay you
20 \$8,422,200; so that you will never exercise your phony option,
21 correct?

22 A. Correct.

23 Q. And that was done over two years, correct?

24 A. What was done?

25 Q. The payment was made over two years, correct?

CAIPCOL2

Trosten - cross

1 A. Yes.

2 Q. And because you back-dated Exhibit 118 to July 1998, you
3 were able to get a payment over two years of \$8,422,200 at a
4 capital gains rate and not at a rate for ordinary income,
5 correct?

6 A. That is correct.

7 Q. You thought this one up all by yourself, right?

8 A. I don't understand the question, I'm sorry.

9 Q. This was your idea?

10 A. Yes.

11 Q. And that capital gains rate saved you taxes of about
12 20 percent on the \$8,422,000, correct?

13 A. That is correct.

14 Q. So you submitted a tax fraud against the United States for
15 \$1.6 million, correct?

16 A. Approximately, that's correct.

17 Q. You entered an agreement with the United States of America
18 that you testified about on direct?

19 A. Yes.

20 Q. Have you had to pay those taxes?

21 A. No, I have not.

22 Q. Have you had to pay penalties on those taxes?

23 A. No, I have not.

24 Q. Have you had to pay interest on those taxes?

25 A. No.

CAIPCOL2

Trosten - cross

1 Q. Now, the first year your payment on this phony option was
2 \$4.2 million, correct?

3 A. Approximately, correct.

4 Q. And then you gave the company \$2.8 million for the house,
5 right?

6 A. Correct.

7 Q. And you put a million and four in your own pocket?

8 A. Correct.

9 Q. In addition to all the money we've already been talking
10 about?

11 A. Well, some of those agreements ended up changing over time,
12 but in addition to the cash that I received, that's correct.

13 Q. And the next year you got \$4.2 million, correct?

14 A. Approximately.

15 Q. The company ended up first buying the house, then giving
16 you money to buy it back from them, and helping you commit a
17 tax fraud in the same instance, right?

18 A. Yes.

19 Q. Now, you own the house free and clear, right?

20 A. Yes.

21 Q. And that's the house your ex-wife lives in today, correct?

22 A. That is incorrect.

23 Q. You left the company in 2004; is that right?

24 A. Yes.

25 Q. And you testified under direct examination that you left

CAIPCOL2

Trosten - cross

1 because you didn't want to sign a document that would be filed
2 with the SEC, correct?

3 A. Correct.

4 Q. After all these years of signing false financial
5 statements, right?

6 A. Correct.

7 Q. Which were, by the way, filed with the SEC in the bond
8 offering in 2004, correct?

9 A. They were when those bonds became public bonds. They were
10 private bonds initially.

11 Q. But those are documents that you had created, the false
12 financial statements?

13 A. Correct.

14 Q. Isn't it a fact, sir, that you left the company because
15 Mr. Schoen of TH Lee told Phil Bennett he didn't think you were
16 up to the job?

17 A. I had no knowledge of that.

18 Q. But the conversation that you had about leaving the company
19 was with Mr. Bennett, right?

20 A. Correct.

21 Q. And by that time, you were CFO, correct?

22 A. Correct.

23 Q. You became CFO in what year?

24 A. Approximately 2001.

25 Q. And as you left in 2004, as you testified this morning, you

CAIPCOL2

Trosten - cross

1 got an additional \$46 million from the company, right?

2 A. That is correct.

3 Q. That was money that was made to look as if you had gotten
4 it for successfully completing the Lee transaction, correct?

5 A. That is correct.

6 Q. And what that meant was that you had succeeded in lying to
7 Lee, correct?

8 A. Correct.

9 Q. This was another payday for the fraud, correct?

10 A. Correct.

11 Q. And it was divided into two pieces, correct?

12 A. Correct.

13 Q. One was \$20 million of severance, correct?

14 A. Approximately, correct.

15 Q. And the other was \$26 million for what you call your
16 profits participation, correct?

17 A. Approximately, that's correct.

18 Q. And you committed tax fraud on the payout, correct?

19 A. Correct.

20 Q. You filed a phony tax return, correct?

21 A. Correct.

22 Q. And when you first met with the government, after you began
23 to cooperate and sign the cooperation agreement, you told them
24 you had only committed tax fraud once in your life, correct?

25 A. Once as it relates to the options. It was in two different

CAIPCOL2

Trosten - cross

1 years.

2 Q. But you didn't tell them about this tax fraud, correct?

3 A. Correct.

4 Q. You didn't tell them about this tax fraud until we
5 subpoenaed you for those tax returns, correct?

6 A. That is correct.

7 Q. And then you went in to the government and you told them
8 you committed a tax fraud, correct?

9 A. Correct.

10 Q. And tax fraud is a crime, correct?

11 A. Yes.

12 Q. And do you remember on direct examination you testified
13 that if you lied to the government, they could rip up your
14 agreement, correct?

15 A. Correct.

16 Q. Did they rip up your agreement, sir?

17 A. No, they have not.

18 Q. You lied to them, correct?

19 A. Correct.

20 Q. And we caught you in the lie, correct?

21 A. Yes.

22 Q. And they didn't rip up your agreement, right?

23 A. No.

24 MR. SCHWARTZ: Your Honor, this would be a good time
25 for a break.

CAIPCOL2

Trosten - cross

1 THE COURT: Shall we take a break, ladies and
2 gentlemen? Would you follow your normal instructions. Leave
3 your exhibits here, take the pads with you, and please remember
4 not to discuss the case amongst yourselves. See you shortly.

5 (Jury exits)

6 THE COURT: Anything's else op the record, counsel?

7 MR. SCHWARTZ: Is your Honor planning to break at
8 normal time today for lunch, even though it's a half an hour?

9 THE COURT: I don't know. We'll see. Don't know the
10 answer to that. How are we doing -- Anything else on the
11 record?

12 MR. LEVY: Yes, your Honor. I think the government
13 does need to make a record on something.

14 THE COURT: Okay. Won't you be seated, counsel,
15 ladies and gentlemen.

16 MR. LEVY: I don't think it matters for the witness at
17 all.

18 THE COURT: Sir, you may step down.

19 (Witness temporarily excused)

20 MR. LEVY: It has to do with a juror. Your Honor,
21 this morning juror No. 5 was exhibiting some unusual behavior
22 that I wanted to make a record on, and we think maybe an
23 inquiry is required.

24 First, she came out and she assembled in front of her
25 on the bar from the jury box five brightly colored jeweled

CAIPCOL2

Trosten - cross

1 rings in a sort of semi-circle facing out. At some point later
2 in the examination, I didn't catch when, she turned each of the
3 five in a semi-circle facing her. That, in and of itself, the
4 courtroom's drab, and if she's trying to color it up, that's
5 fine.

6 THE COURT: I resent that.

7 MR. LEVY: At some point during the examination of
8 Mr. Trosten, she turned around, faced the jurors behind her and
9 held up what appeared to be a Lucite encased silver bill of
10 some sort during direct examination and sort of, like a signal,
11 turned around and sort of showed it to all them, and then
12 placed it back in her lap.

13 I don't know what the signal was meant to be. For all
14 I know, somebody had tapped her shoulder and said, "What's
15 that?" Although, it's an odd thing for her to have brought in,
16 but it looked more like a signal.

17 She has another trinket of some sort that's -- it
18 seems to be some sort of large coin, again, in some sort of
19 Lucite case of some sort. I don't know what she's doing. The
20 rings alone were odd. The fact that they moved part way
21 through is odd.

22 And so she's also, I think, muttering a certain amount
23 during the testimony. You will recall she gave some unusual
24 answers during jury selection. I think our recommendation
25 would be -- if it were just the rings, maybe we'd watch a

CAIPCOL2

Trosten - cross

1 little further. If she's actually turning around and
2 potentially sending signals during the deliberation -- I'll
3 note, by the way, this is not lost on the other jurors. I made
4 eye contact, in looking over, with juror No. 6, who sort of
5 rolled her eyes at me.

6 So I think maybe it warrants an in camera examination
7 of this juror about what exactly she's doing. If it's
8 harmless, then it's harmless. I'd also ask that your Honor
9 make it appear as though your Honor noticed it and not
10 something that we noticed.

11 THE COURT: Also on the muttering point, she certainly
12 seemed to be talking to herself yesterday during the testimony
13 and, apparently, one or more of the jurors has said to the
14 courtroom deputy that she seems to be talking to herself. So I
15 will be guided by your views as to how we should proceed here.

16 MR. LEVY: I think our view is that your Honor should
17 call her into chambers with all the parties present and just
18 ask her sort of what some of the things she's clearly
19 deliberately doing today are intended to mean.

20 MR. SCHWARTZ: Your Honor, on all things concerning
21 jewelry, I trust the Court, and if you may --

22 THE COURT: But not plastic jewelry, Mr. Schwartz.

23 MR. SCHWARTZ: But we have no objection to your Honor
24 making inquiry.

25 THE COURT: When do you want me to do that, friends?

CAIPCOL2

Trosten - cross

1 MR. SCHWARTZ: Maybe you should do it now.

2 MR. LEVY: I think maybe that makes sense now. I
3 would ask -- I was nervous in bringing this up, that it would
4 cut into the bathroom break that I kind of need, but other than
5 that --

6 THE COURT: I promise you, you'll get a bathroom
7 break.

8 Miss Reporter, would you be kind enough to come into
9 the robing room with counsel, and as soon as we're all there
10 and situated, I'll ask Gilbert if he would get juror No. 5,
11 Miss Virgo, and ask her if she might come in. And if you want,
12 you can say to her, you may bring your bag with you so that she
13 has the stuff.

14 (Continued on next page)

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CAIPCOL2

Trosten - cross

1 (In robing room)

2 (Juror not present)

3 MR. SCHWARTZ: Defendants waive his presence at this
4 proceeding.

5 THE COURT: Thank you. I propose to say to her that I
6 note that she had some colored objects on the sidebar. I
7 wondered what they were, and she seemed to change the position
8 and that she exhibited something to the other jurors, I wonder
9 what that was. Any objection?

10 MR. CHERNOFF: No, your Honor.

11 MR. LEVY: And I think sort of why?

12 MR. SCHWARTZ: Your Honor, will you explain to her the
13 reason that the lawyers are here is that what the rules
14 require?

15 THE COURT: Yes.

16 THE COURT: Off the record.

17 (Discussion held off the record)

18 (Juror enters)

19 THE COURT: Good morning, Miss Virgo. Won't you have
20 a seat, ma'am.

21 JUROR: Yes.

22 THE COURT: Hi. We're all in here, this is the robing
23 room. This is where I put my robe on, and the lawyers are
24 present because the rules require that. That's how we keep
25 things fair and even here.

CAIPCOL2

Trosten - cross

1 I noticed this morning that you had some nicely
2 colored objects. I'm not sure if they were rings or what --

3 JUROR: Mmm, hmm.

4 THE COURT: -- that you put up on the sidebar, and
5 then, at some point, you changed their positions.

6 JUROR: Mmm, hmm.

7 THE COURT: Would you mind telling me what they are
8 and what you were doing with them, please?

9 JUROR: May I ask what this inquiry is for, first,
10 please?

11 THE COURT: It's my inquiry because I notice that you
12 had done a couple of things that perhaps other jurors hadn't
13 done, and I just wanted to find out what the reason was.

14 JUROR: We were discussing property yesterday, and
15 they asked me to bring something an equivalent of.

16 THE COURT: And with whom were you discussing the
17 property, ma'am?

18 JUROR: The other jurors, and I was hearing stuff from
19 one of the prosecutors, I think.

20 THE COURT: I'm sorry, ma'am. Say it again?

21 JUROR: Prosecutors or something like that.

22 THE COURT: You had a conversation with a --

23 JUROR: No, I thought I heard him say something about
24 some sort of property.

25 THE COURT: Oh, I see. During the course of the

CAIPCOL2

Trosten - cross

1 trial?

2 JUROR: Mmm, hmm.

3 THE COURT: And what were the other jurors asking you
4 about property, ma'am?

5 JUROR: They were talking about gold and silver coins
6 and that sort of thing.

7 THE COURT: I see. And what did you bring in this
8 morning, ma'am?

9 JUROR: Not gold. A silver coin. I'm not trying to
10 sell any of them. They wanted to see them.

11 THE COURT: I see.

12 JUROR: And --

13 THE COURT: And I thought I saw a couple of
14 different-colored objects. Maybe they were rings or something?

15 JUROR: They're all innocuous. Do you want to see
16 them?

17 THE COURT: Oh, you have them.

18 THE DEPUTY CLERK: Do you want to see them, Judge?

19 THE COURT: Oh, they are rings.

20 JUROR: Yes.

21 THE COURT: What kind of rings are they, ma'am?

22 JUROR: I really don't know. It was --

23 THE COURT: Oh, they're beautiful, and I guess let the
24 record reflect that Ms. Virgo has rings of different colors,
25 blue, black, green. What do you think, light blue on this one?

CAIPCOL2

Trosten - cross

1 JUROR: I don't know.

2 THE COURT: I think they're plastic. They're quite
3 beautiful, and I noticed, ma'am, that you put them down on the
4 bar.

5 JUROR: Mmm, hmm.

6 THE COURT: The jury rail, and then at some point, you
7 moved them to a different position.

8 JUROR: I thought I heard them whisper to change the
9 position. I thought it was from the prosecutor because the
10 first one from the witness I thought I heard, and then from the
11 other one. I'm a known holder.

12 THE COURT: Say again, ma'am?

13 JUROR: I'm a known holder of this sort of stuff; so
14 everyone knows in town. So I get this all the time.

15 THE COURT: I see. And are you saying that the
16 witness whispered to you about the stuff?

17 JUROR: I sort of thought I heard something like that
18 in between that. So I'm a known holder; so....

19 THE COURT: And known just generally in town, ma'am,
20 or how are you known to hold this type of material?

21 JUROR: In New York. I would say in New York City.

22 THE COURT: I see. Yes, ma'am. And I think I heard
23 you say that you thought the prosecutor whispered to you to
24 change the position as well?

25 JUROR: He wanted to see.

CAIPCOL2

Trosten - cross

1 THE COURT: I'm sorry?

2 JUROR: He just wanted to see it, I thought.

3 THE COURT: Okay. Am I correct that you showed
4 something else, which was not one of the beautiful rings but
5 something else, to the other jurors? Now, what was that,
6 ma'am?

7 JUROR: It was just these. Shall I slide it down?

8 THE COURT: Mr. Cordona will help us. Oh. And are
9 those the silver coins, ma'am?

10 JUROR: Yes.

11 THE COURT: I see.

12 JUROR: We're not reading anything. We're told not to
13 bring any reading material.

14 THE COURT: Yes, ma'am.

15 JUROR: Technically, I think I'm okay, but you can
16 throw me out, if you like.

17 THE COURT: So these are silver American Eagle 2005
18 coins. They're just beautiful, ma'am.

19 JUROR: Thank you.

20 THE COURT: They say: One ounce fine silver, one
21 dollar, and they're in the packages that you received them in,
22 yes, ma'am?

23 JUROR: Mmm, hmm.

24 THE COURT: And why did you show those to the other
25 jurors, ma'am?

CAIPCOL2

Trosten - cross

1 JUROR: I think we had a discussion, actually, with
2 the lady next to me, about the gold and the silver yesterday.
3 She didn't even remember it too much herself, and that was why.

4 THE COURT: And did she ask you during the trial to
5 show it to her, or did you just happen to do it at that moment?

6 JUROR: I think she asked me yesterday to bring the
7 stuff in.

8 THE COURT: I see. And so you showed it to her during
9 the testimony?

10 JUROR: Yeah, because I didn't want to have to show it
11 to them all, but --

12 THE COURT: Yes, ma'am. Anything else you want to
13 tell me about these lovely things that you brought in?

14 JUROR: I can't think of anything else, other than
15 they asked me to do that. I should have, I suppose, done it in
16 the break room, but....

17 THE COURT: But here we are, right?

18 JUROR: Yeah, sorry. I apologize.

19 THE COURT: All right, ma'am. I think we can excuse
20 Miss Virgo; is that right, counsel?

21 MR. SCHWARTZ: Yes, your Honor.

22 MR. CHERNOFF: Yes, your Honor.

23 THE COURT: Yes, ma'am. Thank you so much. Thank
24 you, Gilbert.

25 (Juror exits robing room)

CAIPCOL2

Trosten - cross

1 MR. LEVY: Should we ask Gilbert not to let her go
2 back in the jury room?

3 THE COURT: Yes. Any proposals?

4 MR. LEVY: I think we have to excuse her, your Honor.
5 She's hearing voices.

6 THE COURT: Any objection, gentlemen?

7 MR. SCHWARTZ: May we confer? Is that -- Can we talk
8 to our client? That's something --

9 THE COURT: Yes, of course. The sooner the better.

10 MR. SCHWARTZ: I knew you'd be good with the jury.

11 THE COURT: You say that to all the girls. Off the
12 record.

13 (Discussion held off the record)

14 MR. SCHWARTZ: Your Honor, we've conferred with our
15 client and we have no objection.

16 THE COURT: All right. I propose to ask the deputy to
17 bring her back in, and I will tell her that she is excused from
18 this jury with the thanks of the Court. Is there any objection
19 or suggestion on that one?

20 MR. CHERNOFF: No, your Honor.

21 MR. BACH: I would also instruct her not to have any
22 contact with these jurors.

23 THE COURT: Good. Okay. I'm going to ask Gilbert to
24 take her back down to the jury assembly room and actually help
25 her clear the building, just so we know she's out.

CAIPCOL2

Trosten - cross

1 LAW CLERK: Does she take her notes with her?

2 THE COURT: She can take her notes with her.

3 MR. LEVY: No, are they leaving her notes in their
4 chairs? She won't be required to go back in with the jurors to
5 get her notes?

6 LAW CLERK: Yes.

7 THE COURT: Tell Gilbert don't let her go back in the
8 jury room.

9 MR. SCHWARTZ: I wonder if she has notes of what she
10 heard Harry say to her.

11 THE COURT: And then I'll ask Gilbert to inform
12 alternate No. 1 that she should come out in juror No. 5's
13 place; so that she knows that she's going to move up in the
14 lineup. Actually, I'll have Martha do it.

15 MR. LEVY: Minor point. And does she become juror
16 No. 5, or does everybody shift up?

17 THE COURT: No, she's going to become juror No. 5.

18 MR. SCHWARTZ: What difference does it make?

19 THE COURT: Off the record.

20 (Discussion held off the record)

21 (Juror reenters)

22 THE COURT: Thank you for coming back in, Miss Virgo.
23 Ma'am, we're going to excuse you from the case.

24 JUROR: Thank you.

25 THE COURT: And I'm going to ask Gilbert to take you

CAIPCOL2

Trosten - cross

1 down to the jury assembly room so that they know that you are
2 departing the case, and just help you get out through the
3 guards and whatever you have to do. Thank you for coming in,
4 ma'am. It was nice to see you.

5 JUROR: Thank you. And I'm not under charges or
6 anything, am I?

7 THE COURT: Oh, no, of course. Thank you, ma'am. Oh,
8 Miss Virgo, I'm sorry, ma'am, I forgot. Would you be sure not
9 to make any contact with any of the other jurors? Because, you
10 know, we don't want them violating the normal rules, right?

11 So they can't have any contact with you, and you can't
12 have any contact with them. After the case is over, I think we
13 probably have about six weeks left, you're free to call
14 chambers and we'll let you know what happened, if you want.

15 JUROR: I don't really care.

16 THE COURT: All right. Better even. But just be sure
17 you don't contact the other jurors, ma'am. Off the record.

18 (Juror exits)

19 (Discussion held off the record)

20 THE COURT: Was there something else on the record?

21 MR. LEVY: No, that was the point.

22 THE COURT: Anything else?

23 MR. SCHWARTZ: No.

24 (Discussion held off the record)

25 THE COURT: On the record. Counsel just asked if

CAIPCOL2

Trosten - cross

1 there's anything to be said to jurors about what just happened,
2 and I think there was unanimous agreement that they will get it
3 and nothing else needs to be said. Is there any objection to
4 that?

5 MR. LEVY: No, your Honor.

6 MR. CHERNOFF: Should we just say that Ms. Virgo has
7 been excused and won't be coming back?

8 THE COURT: Yes, just Miss Virgo is excused. She's
9 been told not to contact you. You shouldn't contact her.
10 Miss Whitehurst is now juror No. 5. Okay?

11 MR. SCHWARTZ: Thank you, your Honor.

12 MR. LEVY: Thank you.

13 THE COURT: Let's go, kids.

14 (Continued on next page)
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CAIPCOL2

Trosten - cross

1 (In open court) (Jury enters)

2 THE COURT: Welcome back, ladies and gentlemen. And
3 won't you be seated, ladies and gentlemen. Ladies and
4 gentlemen, I have excused Miss Virgo from the case, and as you
5 see, Miss Whitehurst has now become juror No. 5. From my
6 vantage point, it's obvious for the reason for this, is the
7 beautiful shawls in the front row of the jury. We continue now
8 with the cross-examination of the witness.

9 Mr. Schwartz?

10 BY MR. SCHWARTZ:

11 Q. You testified yesterday about the Niederhoffer losses; is
12 that correct?

13 A. That is correct.

14 Q. And I'll come back to that in more detail, but I have just
15 a few questions now. Niederhoffer was one of these people who
16 lost money because he couldn't make -- Strike that.

17 Niederhoffer, Victor Niederhoffer was one of these
18 people with accounts at Refco that had borrowed on margin,
19 correct?

20 A. Yes.

21 Q. And he couldn't make the margin call, correct?

22 A. Yes.

23 Q. And Refco had to cover his losses, right?

24 A. Right.

25 Q. And the government showed you some agreements yesterday,

CAIPCOL2

Trosten - cross

1 correct?

2 A. Yes.

3 Q. And Mr. Niederhoffer agreed to turn over different assets
4 to Refco that were not liquid in order to help pay for the
5 losses that Refco had to cover, correct?

6 A. That is correct.

7 Q. And by not liquid, I mean assets that Refco couldn't
8 immediately turn into money, correct?

9 A. Yes.

10 Q. Among the things that he gave Refco was stock in a company
11 called Navtech; is that correct?

12 A. Yes.

13 Q. And Navtech was restricted stock, right?

14 A. I believe that to be true.

15 Q. That means it couldn't be sold for a while, right?

16 A. Yes.

17 Q. But it now belonged to Refco because Mr. Niederhoffer
18 couldn't pay them, right?

19 A. Correct.

20 Q. And there came a time, at about the time of the Lee deal,
21 when Navtech had an initial public offering and it became a
22 public company, correct?

23 A. I believe it was after the Lee deal, but --

24 Q. After the Lee deal?

25 A. I believe so.

CAIPCOL2

Trosten - cross

1 Q. After you left?

2 A. That's my recollection.

3 Q. And the stock price soared of Navtech, correct?

4 A. When you say soared --

5 Q. All of a sudden, it was worth a lot of money?

6 A. The stock price went up, that's correct.

7 Q. How much did the stock of Navtech was it worth after the
8 public offering that the company had?

9 A. At some point, it was in excess of \$50 a share. I don't
10 recall that much of that.

11 Q. And that was an asset of Refco, right? Because
12 Niederhoffer turned it over to Refco?

13 A. Yes.

14 Q. And what happened was the managers of Refco took the stock
15 and sold it for themselves?

16 A. That is correct.

17 Q. They didn't leave it for Lee when he took over the company,
18 correct?

19 A. Yes.

20 Q. Yes, that's correct?

21 A. Yes, that is correct.

22 Q. And you got a cut of that pie, right?

23 A. I did.

24 Q. How much?

25 A. After the reverse split, I think it was about, maybe 50,000

CAIPCOL2

Trosten - cross

1 shares. I just don't remember.

2 Q. And how much were they worth?

3 A. A couple million dollars.

4 Q. So after Refco was sold to Lee, Bennett took the stock out
5 of the drawer, sold it and gave you a couple million dollars,
6 correct?

7 A. No.

8 Q. The stock was sold?

9 A. The stock was distributed to several of the managers.

10 Q. Bennett took the stock out of the drawer and gave you
11 shares, correct?

12 A. Correct.

13 Q. That belonged to Refco, correct?

14 A. Correct.

15 Q. And Lee owned 57 percent of Refco at that time, correct?

16 A. Not at that time, no.

17 Q. It was after --

18 A. The stock was transferred prior to Lee closing on the deal.

19 Q. So as you're waiting for Lee to close on the deal, correct?

20 A. Yes.

21 Q. Lee is expecting to buy the company with all of its assets,
22 right?

23 A. Yes.

24 Q. Mr. Bennett goes in the drawer, or did you go to the
25 drawer? Who went into the drawer to find the stock?

CAIPCOL2

Trosten - cross

1 A. It didn't actually happen that way, but Mr. Bennett decided
2 on the allocation of the stock, if that's what you're asking.

3 Q. And you got some, correct?

4 A. Yes, I did.

5 Q. And you knew that was a fraud, correct?

6 A. No.

7 Q. Oh, you didn't think taking the stock out of the drawer and
8 putting it in your pocket was a fraud; is that your testimony
9 in this court?

10 A. Yes.

11 Q. And then it went public?

12 A. Correct.

13 Q. And you sold yours for two-and-a-half million dollars,
14 correct?

15 A. Approximately.

16 Q. So you were hired at the company at the age of 28, correct?

17 A. 27, 28.

18 Q. And you were -- In 1997?

19 A. Yes.

20 Q. And you were making approximately \$120,000 a year when you
21 were hired?

22 A. Base salary, correct.

23 Q. That's not a bad base salary for somebody who was 27, 28
24 years old, correct?

25 A. I thought it was a good salary, yes.

CAIPCOL2

Trosten - cross

1 Q. But by the time you left at 35, in 2004, you'd had over 70
2 million, plus or minus, correct?

3 A. That is correct.

4 Q. And then it all came tumbling down, right?

5 A. Yes.

6 Q. The company went under in October of 2005?

7 A. Yes.

8 Q. And you understood that you were in serious trouble?

9 A. At some point, that's correct.

10 Q. Right after the company went down?

11 A. Hard to say what I was thinking at that exact same time,
12 but clearly within weeks I was very, very concerned.

13 Q. You got a phone call from Santo Maggio, didn't you?

14 A. I did.

15 Q. And you thought he was taping you, correct?

16 A. Correct.

17 Q. And it turns out he was taping you, correct?

18 A. Yes.

19 Q. By the way, when you called Joe Collins for a lawyer, you
20 didn't tell him that, did you?

21 A. No.

22 Q. And you knew then that you were in trouble, right?

23 A. I still didn't know, but I was concerned that he was taping
24 me, that's correct.

25 Q. When you pleaded guilty -- This was in 2005, correct, that

CAIPCOL2

Trosten - cross

1 Maggio called you?

2 A. Yes.

3 Q. And you ultimately pleaded guilty in 2008?

4 A. Yes.

5 Q. And you were facing 85 years in jail, correct?

6 A. That is correct.

7 Q. Now, it's a fact, isn't it, that you have been scheduled
8 for sentencing in this courthouse more than once, correct?

9 A. Yes.

10 Q. You have, in fact -- And by the way, the judge who you
11 think is going to sentence you is not her Honor but Judge
12 Buchwald, right?

13 A. It will be one or the other or as the determined by the
14 court.

15 Q. The sentencings that have been scheduled have been
16 scheduled in front of Judge Buchwald, right?

17 A. That's my understanding, yes.

18 Q. And they keep getting adjourned so that you can finish your
19 testimony in this case; isn't that right?

20 A. It keeps getting adjourned until the government's decided
21 that I'm done cooperating.

22 Q. The government told you you will not be sentenced until
23 this case is over and you have finished testifying; is that
24 correct?

25 A. That is correct.

CAIPCOL2

Trosten - cross

1 Q. And they have adjourned the sentencing seven times; is that
2 correct?

3 A. I don't know.

4 Q. Does it sound in the neighborhood?

5 A. I actually don't know.

6 Q. More than once, right?

7 A. Yes.

8 Q. And, sir, you're hoping that after you finish testifying
9 here and your sentence is no longer adjourned and you appear
10 before the sentencing judge, that you will walk out of this
11 courtroom on probation, out of this courthouse on probation; is
12 that correct?

13 A. Absolutely.

14 Q. And in the time since 2005, when Refco has collapsed, you
15 have not spent a single day in jail on this case; is that
16 correct?

17 A. That is correct.

18 Q. And you are hoping that you will never go to jail on this
19 case, correct?

20 A. Yes.

21 Q. And one of the things you are hoping that will contribute
22 to that is that you will get a letter from the government to
23 the sentencing judge, correct?

24 A. That is correct.

25 Q. And it is a fact that you believe the strength of the

CAIPCOL2

Trosten - cross

1 government's sentencing letter may have an impact on the
2 sentencing judge, correct?

3 A. Yes.

4 Q. And you are hoping that the government will refer to your
5 testimony in this case in that letter; is that correct?

6 A. Yes.

7 Q. So it's your hope that, despite having lied for \$70 million
8 and participated in the fraud of a couple of billion dollars,
9 you will never go to jail?

10 A. I need you to repeat the question, please. You said
11 something about \$70 million?

12 Q. You made \$70 million, right?

13 A. Yes.

14 Q. You participated in a fraud that was a couple of billion
15 dollars, correct?

16 A. Correct.

17 Q. That's how much money people lost?

18 A. Yes.

19 Q. And you're hoping after you finish testifying in this case,
20 you'll never go to jail, correct?

21 A. Yes.

22 Q. Now, this business of cooperation is a process; am I
23 correct?

24 A. You are correct.

25 Q. It doesn't -- You don't come to the government and say, I

CAIPCOL2

Trosten - cross

1 want to make a deal; they say great we're glad you're here,
2 right?

3 A. That didn't happen with me, no.

4 Q. You have to go to the government and sit down with them and
5 tell them everything that took place; is that right?

6 A. Yes.

7 Q. And that's what the lawyer, who Mr. Collins recommended to
8 you, did. He took you into the government so you could tell
9 them what took place, right?

10 A. Yes.

11 Q. By the way, he never told you to lie, did he?

12 A. Counsel?

13 Q. Yes.

14 A. No.

15 Q. You know him pretty well, correct?

16 A. My legal counsel?

17 Q. Your legal counsel.

18 A. I wouldn't say I knew him well, no.

19 Q. But you had great faith in his integrity?

20 A. Yes.

21 Q. And you met with the government starting in what month
22 after the collapse of Refco?

23 A. In the same month, October of '05.

24 Q. And you met with them into July of 2006, at least six
25 times, right?

CAIPCOL2

Trosten - cross

1 A. Approximately.

2 Q. And each meeting with the government was approximately four
3 hours; is that correct?

4 A. On average, correct.

5 Q. Some of them lasted a whole day, right?

6 A. They may have. I don't remember.

7 Q. But it's fair to say you spent, on average, at least 24 --
8 a total of at least 24 hours with the government?

9 A. Approximately, yes.

10 Q. And each time you go in, you'd sign a document, correct?

11 A. That is correct.

12 (Continued on next page)

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Caidcol3

Trosten - cross

1 Q. And you would give -- you would answer their questions,
2 right?

3 A. Yes, I would answer their questions.

4 Q. And after these approximately 24 hours in July, they
5 finally offered you a deal, is that correct?

6 A. Yes.

7 Q. And you turned it down, right?

8 A. I did.

9 Q. Because you did not want to give up your assets, correct?

10 A. Yes.

11 Q. You liked the way you lived?

12 A. Yes.

13 Q. And what the government did after you turned down the deal
14 is they went to the Grand Jury and asked the Grand Jury to
15 indict you, correct?

16 A. Right. That is correct.

17 Q. And you were in fact indicted?

18 A. Yes.

19 Q. And your trial was scheduled for the spring of 2008, is
20 that correct?

21 A. Yes.

22 Q. And you spent a lot of time with counsel preparing to go to
23 trial, correct?

24 A. Yes.

25 Q. And you spent a lot of time thinking about whether you

Caidcol3

Trosten - cross

1 could succeed at trial, correct?

2 A. Yes.

3 Q. And you learned that because of the six times you had gone
4 into the government and signed that agreement before
5 discussing -- before answering their questions, that they were
6 going to be able to try you by putting on your confession,
7 correct?

8 A. Under certain circumstances, that's correct.

9 Q. If your lawyer stood up in front of the jury and said my
10 client didn't commit these crimes, they were going to be able
11 to call an agent who sat in those meetings to say you had
12 confessed, correct?

13 A. Yes.

14 Q. You had no way you could win at a trial, right?

15 A. I didn't believe so, no.

16 Q. And you made a deal?

17 A. Yes.

18 Q. That took place in February of 2008, correct?

19 A. Correct.

20 Q. Can we take the period from October 2005 to July 2006, when
21 you had the first six meetings with the government before you
22 turned them down, and can we call them round one, please, sir?

23 A. OK.

24 Q. And we'll take the period after you made your deal and we
25 will call it round two, correct? All right?

Caidcol3

Trosten - cross

1 A. OK.

2 Q. And I will refer to round one and round two throughout your
3 testimony and you will know what I mean, is that right?

4 A. OK.

5 Q. Round one is the period where you are talking to them but
6 you turned down the deal, and round two is the period after you
7 get the deal, OK?

8 A. OK.

9 Q. Now, this morning when the government asked you questions
10 about who you had implicated in the fraud, that was all round
11 one, right?

12 A. Yes.

13 Q. And you didn't tell them that you had had conversations
14 with Joseph Collins about the hole in round one, correct?

15 A. That is correct.

16 Q. So let's just understand, sir, you knew what they were
17 looking for was everything you knew about this fraud, correct?

18 A. Yes.

19 Q. And you didn't tell them about the conversations you told
20 us about today or yesterday, is that correct?

21 A. I was instructed to answer the questions as asked.

22 Q. They asked you about Joseph Collins, isn't that a fact?

23 A. I don't remember.

24 Q. You told them that Joseph Collins had documented the
25 round-trip loans; do you remember that?

Caidcol3

Trosten - cross

1 A. I don't remember whether it would be in round one or round
2 two.

3 Q. Do you recall testifying in another proceeding under oath?

4 A. Yes.

5 Q. You took the oath and you swore to tell the truth, correct?

6 A. Correct.

7 Q. And that was in 2009; do you remember that?

8 A. I do.

9 Q. That was a lot closer to the time, correct?

10 A. To what time?

11 Q. The time when you were working at Refco -- I'm sorry, a lot
12 closer to round one.

13 A. Than today?

14 Q. Yes.

15 A. Yes.

16 Q. And your testimony today is you don't -- you don't remember
17 ever being asked about Joseph Collins in round one, correct?

18 A. I remember a discussion about the round-trip loans in round
19 one, and I believe I was shown a document.

20 Q. Do you remember being asked, under oath, this question and
21 giving this answer, or these questions and giving these
22 answers, at page 726?

23 "Q You understood, sir, that one of the things the government
24 wanted to know was who had participated in the fraud, right?"

25 You answered, "Yes."

Caidcol3

Trosten - cross

1 "And then they asked you about Joe Collins, and you
2 gave them answers, right?

3 "A That is correct."

4 Do you remember giving that testimony?

5 A. I do not remember giving that testimony. I don't dispute
6 it.

7 Q. Would it refresh your recollection if I show it to you?

8 A. No.

9 Q. You didn't tell them in round one about Joe Collins what
10 you told this jury, correct?

11 A. I don't remember.

12 Q. Did you tell them about the conversation where you told
13 them \$700 million -- that Joe, the ENY is calling, they want to
14 know about the \$700 million in intercompany debt; you didn't
15 tell them that in round one?

16 A. I did not.

17 Q. You didn't tell them that you called up Joe Collins and had
18 a conversation with him about the intercompany -- backdating
19 documents for the round-trip loans in round one, correct?

20 A. I don't remember.

21 Q. You didn't tell them about your conversation with Joe
22 Collins on the PPA in round one, is that correct?

23 A. I recall a discussion regarding the PPA in round one.

24 Q. You told them Joe Collins worked on the PPA, correct?

25 A. Yes.

Caidcol3

Trosten - cross

1 Q. But you didn't tell them what your conversations were with
2 him, is that right?

3 A. I don't remember.

4 Q. The government asked you on round one who you had had
5 conversations with about the hole, didn't they?

6 A. Not in that exact form, no.

7 Q. But you understood that's what they wanted to know, isn't
8 that right?

9 A. I understood it to mean at Refco.

10 Q. So if you had conversations about the whole thing with
11 anyone else, you didn't tell them, right?

12 If you had conversations with anyone else at Refco,
13 you didn't think they wanted to know -- anyone else not at
14 Refco, you didn't think they wanted to know that, right?

15 THE COURT: Give me a second.

16 A. I just answered the questions as it was asked of me.

17 (Record read)

18 MR. SCHWARTZ: I will withdraw the question.

19 THE COURT: Let's do it again. Thank you.

20 Q. You knew they were investigating Refco, correct?

21 A. Yes.

22 Q. And you knew they were looking to bring criminal charges
23 against people who were involved in the fraud, correct?

24 A. I believed that to be at Refco, but correct.

25 Q. So that if somebody helped them with the fraud outside of

Caidcol3

Trosten - cross

1 Refco, that didn't care; is that what you believed?

2 A. I believe they wanted to know who at Refco knew about the
3 hole, and that's what I answered.

4 Q. This morning you testified -- you testified yesterday that
5 there came a point where ENY learned about the hole, correct?

6 A. They had always known about the size of the balance.

7 Q. You testified this morning that in round one you didn't
8 tell the government about Ernst & Young, correct?

9 A. I don't think we called it in round one. We were talking
10 about an initial question that was asked in one of the early
11 meetings in round one that I did not reference Ernst & Young.

12 Q. Isn't it a fact, sir, that in the very first meeting you
13 ever had with the government you told them about Ernst & Young?

14 A. I may have, just not in that question, the question that
15 you are referring to.

16 Q. You told them that Ernst & Young was unhappy when they
17 learned about the audited financial statements, correct?

18 A. I don't recall when I did that, but I do recall having that
19 discussion, yes.

20 Q. In round one?

21 A. Yes.

22 Q. And you told them that there were conversations about
23 whether Ernst & Young could continue as Refco's tax advisors,
24 correct?

25 A. Correct.

Caidcol3

Trosten - cross

1 Q. And you told them that you discussed how to keep them on,
2 correct?

3 A. How to keep who on?

4 Q. Ernst & Young.

5 A. That we were going to try to keep them on, yes.

6 Q. And you told them that Ernst & Young wanted to tell the
7 successor tax counsel what it knew, and you told them they
8 couldn't, correct?

9 A. That's incorrect.

10 Q. Ernst & Young wanted to tell the auditors --

11 A. That's correct.

12 Q. -- what was going on?

13 And you told them they couldn't, correct?

14 A. That is correct.

15 Q. So you did tell the government in round one about your
16 conversations with Ernst & Young about the hole, correct?

17 A. I did.

18 Q. But you didn't tell them about any conversations with
19 Joseph Collins about the hole in round one, correct?

20 A. That is correct.

21 Q. And Ernst & Young was not inside Refco?

22 A. No.

23 Q. So when you testified just before that they were only
24 interested in who knew inside Refco, that wasn't true; that
25 they only cared about who was inside Refco, that wasn't true,

Caidcol3

Trosten - cross

1 correct?

2 A. It was referring to a specific question, and I answered it
3 as it related to who inside of Refco knew about the hole.

4 Q. In six meetings with the government in round one you never
5 told them about a conversation with Joseph Collins about the
6 hole, correct or not correct?

7 A. That is correct.

8 Q. And you did tell them about conversations with Ernst &
9 Young, correct or not correct?

10 A. That is true.

11 Q. Then you walked away to save your assets, correct?

12 A. Yes.

13 MR. SCHWARTZ: Can we have, what is the government
14 exhibit with -- if I may, your Honor, ask the prosecutors, what
15 is the government exhibit?

16 THE COURT: Use your off-the-record voice.

17 MR. SCHWARTZ: Off the record.

18 (Counsel conferred)

19 MR. SCHWARTZ: Let's make this easier.

20 Q. Can I show you what has been marked as Defendant's Exhibit
21 127, for identification.

22 This is the schedule of assets that was originally
23 attached -- that is attached to the cooperation agreement that
24 you saw this morning, correct?

25 A. Yes.

Caidcol3

Trosten - cross

1 MR. SCHWARTZ: Can we put it up, please?

2 Can we offer it. We offer it, your Honor.

3 MR. CHERNOFF: It is already in evidence, your Honor.

4 MR. SCHWARTZ: It is in evidence as a different
5 document. I separated it.

6 THE COURT: I'm sorry. It is a different document, or
7 what?

8 MR. SCHWARTZ: It is attached to a longer document. I
9 have separated it out.

10 THE COURT: It is already in?

11 MR. SCHWARTZ: Yes.

12 THE COURT: OK. Good. Thank you.

13 BY MR. SCHWARTZ:

14 Q. So let's take a look and just discuss what it is that you
15 didn't want to forfeit.

16 The first thing is No. 1, you had a certificate of
17 deposit of \$30 million, correct?

18 A. Yes.

19 Q. That was in your wife's name, correct?

20 A. At that time, yes.

21 Q. The money you got from the fraud, right?

22 A. Yes.

23 Q. And then you had another certificate of deposit, number
24 two, for \$4 million, right?

25 A. Correct.

Caidcol3

Trosten - cross

1 Q. And a bank account for \$2 million or more, correct?

2 A. Yes.

3 Q. I'll come back to the houses in a minute.

4 You had a Mercedes-Benz, No. 8, is that right?

5 A. Yes.

6 Q. How much did you pay for that car, sir?

7 A. In excess of \$500,000.

8 Q. In excess of a half a million dollars for an automobile,
9 correct?

10 A. Yes.

11 Q. And then you had a Mercedes-Benz, No. 9, Item 9. How much
12 did you pay for that one?

13 A. Approximately 200,000.

14 Q. How about the Mercedes that's 10?

15 A. Somewhere between 100 and 200,000.

16 Q. And then No. 11, "Approximately \$870,000 plus interest
17 accrued on said funds while in the account holder's possession,
18 being held in an escrow account for Robert Trosten at J.P.
19 Morgan, representing the proceeds from the sale of a Ferrari
20 Enzo formerly owned by Robert Trosten."

21 How much did you say that you paid for that Ferrari?

22 A. Between 1.2 and 1.3 million.

23 Q. And you sold it for \$800,000, correct?

24 A. No.

25 Q. \$870,000?

Caidcol3

Trosten - cross

1 A. Yes.

2 Q. No. 12 was \$245,000, representing the proceeds from the
3 sale of a 2003 Ferrari, correct?

4 A. Correct.

5 Q. How much did you pay for that Ferrari?

6 A. I don't remember. Several hundred thousand dollars.

7 Q. You bought that one after you bought the first one, the one
8 in Item 11?

9 A. I don't believe so.

10 Q. No. 13 is a car -- another car -- another Mercedes. How
11 much did you pay for that?

12 A. Approximately \$100,000.

13 Q. Then we have a series of bank accounts, right?

14 A. There are a series of bank accounts on the schedule, yes.

15 Q. And then another Mercedes is the last item, correct?

16 A. Yes.

17 Q. Now, tell us, sir, how many houses did you own?

18 A. When you say "did I own"?

19 Q. Is there something that you don't understand about that
20 question?

21 A. I owned three homes.

22 Q. In addition to what you bought for your parents, right?

23 A. I was including that because I owned that.

24 Q. So you owned -- where were the homes that you owned?

25 A. The homes that I owned, one was in Franklin Lakes, one was

Caidcol3

Trosten - cross

1 in Sarasota, Florida, and one was in Longboat Key, Florida.

2 Q. The one in Franklin Lakes is the one that we talked about
3 this morning, you and I, that you paid for with the phony
4 option, right?

5 A. That is correct.

6 Q. And the one in Sarasota, Florida was on the water, correct?

7 A. Yes.

8 Q. Let me show you Defense Exhibit 120, for identification.

9 That is the Sarasota house?

10 A. It is.

11 MR. SCHWARTZ: We offer it, your Honor.

12 MR. CHERNOFF: No objection.

13 THE COURT: Received.

14 (Defendant's Exhibit 120 received in evidence)

15 MR. SCHWARTZ: Can we put it on the screen, please?

16 Q. And that house is one of the things you felt it was unfair
17 for the government to ask you to forfeit, is that correct?

18 A. Yes.

19 Q. And, by the way, the first time that you signed -- you
20 turned over to the government -- you were supposed to come in
21 and tell the government all the assets that you have, right?

22 A. They had asked me for my significant assets, and I provided
23 it, yes.

24 Q. Because they wanted to attach a list of assets to the
25 cooperation agreement, correct?

Caidcol3

Trosten - cross

1 A. Yes.

2 Q. And you signed the cooperation agreement, and then this
3 list of assets was listed, correct?

4 A. Yes.

5 Q. And it wasn't complete?

6 A. No.

7 Q. You hadn't told them all of your assets, correct?

8 A. That is correct.

9 Q. So you had come into the government to sign a cooperation
10 agreement and you lied to them about your assets?

11 A. Not intentionally, no.

12 Q. We have your word on that, correct?

13 A. Yes.

14 Q. And then what happened is your house in Sarasota was
15 robbed?

16 A. That is correct.

17 Q. And then you told the government, after the house was
18 robbed, I forgot about the cash that I kept in the house,
19 correct?

20 A. Yes.

21 Q. I forgot about the jewelry that I kept in the house,
22 correct?

23 A. I didn't own the jewelry, it was my wife's.

24 Q. I forgot about my wife's jewelry that I bought with the
25 fraudulent proceeds of this crime that was kept in the house,

Caidcol3

Trosten - cross

1 correct?

2 A. Yes.

3 Q. But now it was gone, right?

4 A. It was gone.

5 Q. Because it had been stolen, correct?

6 A. Yes.

7 Q. They never caught the thief, correct?

8 A. That's my understanding.

9 Q. And so the only way we know what was stolen and how much it
10 was worth is your good word, correct?

11 A. Yes.

12 Q. And what you told the government was that you had \$15,000
13 in U.S. currency that had been stolen, correct?

14 A. That is correct.

15 Q. Pocket change for you, correct, sir?

16 A. No.

17 Q. And the only person who can tell us how much was stolen is
18 you, right?

19 A. Correct.

20 Q. And you told the government that there was a diamond
21 pendant, a diamond necklace and a set of tuxedo studs and
22 cufflinks that were stolen, correct?

23 A. Yes.

24 Q. Is that all the jewelry that you had bought with the
25 \$70 million?

Caidcol3

Trosten - cross

1 A. I don't wear any jewelry. I had a receipt for the pendant.

2 I don't -- I don't buy much jewelry.

3 Q. Did your wife buy jewelry?

4 A. No.

5 Q. No. Did anybody -- did you give jewelry to anybody else?

6 A. Over the course of my tenure at Refco I'm sure I have.

7 Q. Did you tell the government that?

8 A. No.

9 Q. Have you ever told the government that?

10 A. No.

11 Q. Who else did you give jewelry to?

12 A. I imagine my ex-wife, possibly my mother.

13 Q. All bought with the proceeds of the fraud, correct?

14 A. Not necessarily, no. I had worked at other places before
15 that.

16 Q. Some of it bought with the proceeds of the fraud, correct?

17 A. Likely. I don't know that I can differentiate it.

18 Q. And you've never told the government -- the only jewelry
19 you've ever told the government about is the jewelry that was
20 stolen, correct?

21 A. Correct.

22 (Pause)

23 Actually, if I may, that is actually not true. I'm
24 sorry. I also discussed with them the engagement ring that
25 Theresa Dunn had, and that was not stolen.

Caidcol3

Trosten - cross

1 Q. She was your fiancée?

2 A. At the time, or my wife, I just don't remember the timing.

3 Q. So you came back and you told the government after the
4 theft about these additional assets, right?

5 A. I did.

6 Q. And then you also told them that, by the way, I have a box
7 at Madison Square Garden?

8 A. I did.

9 Q. Had that slipped your mind the first time?

10 A. Yes.

11 Q. Isn't it a fact that when you told the government about
12 these additional assets, they said now you've got to tell us
13 all, we're not accepting any more lies; isn't that a fact?

14 A. No. I don't think it was presented that way.

15 Q. You told them about your wine collection, correct?

16 A. I did advise them I had wine, yes.

17 Q. You used to refer to it as a wine collection, isn't that
18 correct?

19 A. In years past I had, yes.

20 Q. So when you say I told them about my wine, that's what you
21 call your wine collection; you were a collector of wine, isn't
22 that correct?

23 A. Not at that time when they took it, no.

24 Q. Then you forfeited your houses, correct?

25 A. Yes.

Caidcol3

Trosten - cross

1 Q. Let me show you Defense Exhibit 122, for identification.

2 THE COURT: When you get to a convenient time, let me
3 know.

4 MR. SCHWARTZ: Almost there.

5 Q. That's what your house looked like, the house we just saw,
6 that's what it looked like after you gave it to the government,
7 correct?

8 A. I know the U.S. marshals took it. I don't know that I have
9 seen this photo.

10 Q. Does that look like your house?

11 A. Yes.

12 MR. SCHWARTZ: We offer it.

13 MR. CHERNOFF: No objection.

14 THE COURT: Received.

15 (Defendant's Exhibit 122 received in evidence)

16 BY MR. SCHWARTZ:

17 Q. And that red, white and blue sign is a sign of the U.S.
18 marshals, right?

19 A. I believe so, yes.

20 MR. SCHWARTZ: This would be a convenient time, your
21 Honor.

22 THE COURT: All right. Ladies and gentlemen, I
23 believe your lunches are in the jury room. As I said, we would
24 like to try to keep it to a half an hour so that we get as much
25 work done today as we can.

Caidcol3

Trosten - cross

1 Would you follow the normal rules? Leave your
2 exhibits here. Take your notepads with you. And please
3 remember not to discuss the case among yourselves.

4 Have a pleasant lunch. Just let us know when you're
5 finished.

6 Thank you, ladies and gentlemen.

7 (Continued on next page)

Caidcol3

Trosten - cross

1 (Jury not present)

2 THE COURT: Is there anything else on the record?

3 MR. CHERNOFF: There is, your Honor.

4 THE COURT: Sir.

5 MR. CHERNOFF: I'm just going to refer to the Rules of
6 Evidence.

7 I think it is OK if the witness is here unless
8 Mr. Schwartz objects. Mr. Schwartz can either refresh
9 recollection or he can offer prior testimony that is
10 inconsistent, but he knows he can't just read testimony into
11 the record from the podium that I don't have even a reference
12 to where it is coming from and a page number. He did give me a
13 page number but I didn't know which document it was.

14 Anyway, the witness can either be -- he can try to
15 refresh it or he can show us how it is inconsistent and then
16 offer it. He can't just read it from the podium and then ask
17 the witness if he remembers giving the testimony.

18 MR. SCHWARTZ: Your Honor, what I did in the first
19 instance was cited the page of the transcript and the date of
20 the transcript, and then I read the witness the question and
21 answer. He said, I don't remember saying that. And I asked
22 him would it refresh his recollection, which I am now entitled
23 to do, if he saw it. He said no, and then I moved on.

24 It is a perfectly appropriate cross-examination for
25 impeachment.

Caidcol3

Trosten - cross

1 THE COURT: OK. You can take the cross-examination
2 tone out, now that we are all among ourselves.

3 MR. SCHWARTZ: Sorry.

4 Your Honor, it was an inconsistent statement, and I
5 was entitled to confront him with it, which I did.

6 THE COURT: All right. But you know how to do it.

7 MR. SCHWARTZ: I do.

8 THE COURT: And I know how hard it is to pull up these
9 transcripts. So if you can do the page cite early in the
10 question, it will let people get to the transcript.

11 MR. SCHWARTZ: And I will wait until the government
12 has gotten it.

13 THE COURT: OK. Cool.

14 Anything else on the record, friends?

15 MR. CHERNOFF: Your Honor, I thought I actually did a
16 very light treatment of the -- is the witness still here?

17 MR. SCHWARTZ: No.

18 MR. CHERNOFF: Of the Giglio this morning in an effort
19 to get the witness to Mr. Schwartz as early as possible. But
20 what we had this morning was all the Giglio the witness just
21 testified to with the documents that memorialized the
22 agreements he just testified to, and I think Mr. Schwartz said
23 at least five times that we're going to come back to that. So
24 at some point this is going to get just way too repetitive. I
25 mean, offering pictures of the padlocked house, I just don't

Caidcol3

Trosten - cross

1 know where a lot of this is going.

2 THE COURT: Let me ask for the relevance of the
3 padlocked house?

4 MR. SCHWARTZ: I will give you the relevance, and I
5 will tell you why I did it, for the same reason that he asked
6 the witness this morning about things he knew I was going to
7 cross him on. This was their redirect in the last case. They
8 showed him the padlocked house. So I just did it. I'm done
9 with that.

10 MR. CHERNOFF: It is not something I did.

11 THE COURT: It is not the sauce for the goose theory.

12 MR. SCHWARTZ: No, but, your Honor --

13 MR. CHERNOFF: All I am asking is that Mr. Schwartz,
14 rather than return to all of these subjects, the backdated
15 options, the tax returns, each raise that he got, the jury has
16 heard this so many times. I am not going to keep jumping up
17 and objecting in the middle of Mr. Schwartz's cross, but I just
18 hope at some point if he doesn't move along, that your Honor
19 will ask Mr. Schwartz to do that.

20 THE COURT: I know. But Mr. Schwartz is doing it at
21 his peril, and if either the jury gets tired of hearing it
22 again or you then get up and I say move along, it is his peril.
23 But I'm sure he is going to move along.

24 MR. SCHWARTZ: Your Honor asked me for a good place to
25 break. It was at the end of that cross.

Caidcol3

Trosten - cross

1 THE COURT: All right. But I know you are going to
2 move along.

3 MR. SCHWARTZ: You've got that right.

4 THE COURT: OK. Hurry up and have your lunches,
5 friends.

6 MR. CHERNOFF: Thank you, your Honor.

7 MR. BACH: What time back?

8 THE COURT: Five after.

9 (Luncheon recess)

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Caidcol3b

Trosten - cross

A F T E R N O O N S E S S I O N

1:15 p.m.

ROBERT TROSTEN,

Resumed, and testified further as follows:

(Jury not present)

THE COURT: May we bring the jurors in, ladies and gentlemen?

THE CLERK: Jury entering.

(Jury present)

THE COURT: Thank you, all.

Won't you be seated.

We continue with the cross-examination of the witness.

Mr. Schwartz.

MR. SCHWARTZ: Thank you, your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION (Resumed)

BY MR. SCHWARTZ:

Q. Mr. Trosten, you testified a number of times with respect to Refco, correct?

A. Correct.

Q. Each time you testified in this courthouse you sat with the government before you testified, corrects?

A. That is correct.

Q. And they prepared you to testify, correct?

A. Yes.

Caidcol3b

Trosten - cross

1 Q. They walked you through the questions they were going to
2 ask you, right?

3 A. We did do questions and answers, yes.

4 Q. And you've also testified at civil depositions, is that
5 correct?

6 A. Yes, it is.

7 Q. Had you sat down with the government before you would
8 testify at those civil depositions?

9 A. I don't remember.

10 Q. Do you remember that when you testified at civil
11 deposition, a federal agent accompanied you to the deposition?

12 A. I don't remember that.

13 Q. You testified at a deposition taken by the Austrian
14 government, correct?

15 A. I did.

16 Q. And that was held in the United States Attorney's office,
17 correct?

18 A. That is correct.

19 Q. And representatives from the United States Attorney's
20 office were present at that time, correct?

21 A. To the best of my recollection, yes.

22 Q. Let's discuss the conversation in which you claim you told
23 Mr. Collins that there was a \$700 million intercompany debt.

24 A. OK.

25 Q. Ernst & Young was preparing your tax returns, right?

Caidcol3b

Trosten - cross

1 A. That is correct.

2 Q. And you received a letter from a partner at Ernst & Young
3 about information that he needed to prepare Refco's 2001 tax
4 return, correct?

5 A. I did.

6 Q. That was Kurt Neidhardt, correct?

7 A. Neidhardt.

8 Q. Neidhardt.

9 And the fact is that at this point you had already
10 lied to Ernst & Young, correct?

11 A. Regarding?

12 Q. Whenever you had to lie, you lied to them, correct?

13 A. That is correct.

14 Q. And by this time you already had to have told them lies,
15 right?

16 A. Yes.

17 Q. And you were prepared to tell Ernst & Young whatever you
18 needed to tell them to get the tax returns done, correct?

19 A. Yes.

20 Q. It didn't matter to you whether what you told Ernst & Young
21 in response to their questions was true or it was false,
22 correct?

23 A. No. That's not correct.

24 Q. You cared about telling them the truth?

25 A. Well, yes, because it had an impact on a potential sale and

Caidcol3b

Trosten - cross

1 how it was going to occur within Refco.

2 Q. For the purpose of this return, 2001, that they were
3 preparing, you were prepared to tell them whatever you needed
4 to tell them to get the return done, correct?

5 A. Yes.

6 Q. Whether it was true or whether it was false?

7 A. That is correct.

8 Q. So if you had to lie, you would?

9 A. Yes.

10 Q. Let me call up on the screen what is in evidence as
11 Government Exhibit 3016 -- I'm sorry, 3014.

12 This is the letter you wrote to Mr. Neidhardt about
13 which you claim to have had the conversation with Mr. Collins,
14 correct?

15 A. Yes.

16 Q. Paragraph 2 refers to representations that have been
17 previously made in the certificate to Ernst & Young, correct,
18 that they asked you further questions about?

19 A. Yes.

20 Q. And you knew that that certificate was false, correct?

21 A. Not all of it.

22 Q. You knew some of it was false, correct?

23 A. Yes, but not as it relates to point 2.

24 Q. But you didn't tell them the certificate you are relying on
25 and you are asking me information about has false information,

Caidcol3b

Trosten - cross

1 correct?

2 A. Yes.

3 Q. Yes, I'm correct?

4 A. Yes, you are correct.

5 Q. Paragraph 3 is a lie, correct?

6 A. Yes, it is.

7 Q. And the reason it is a lie is, as you testified on direct,
8 Refco had no global Internet strategy, correct?

9 A. Refco nor RGHI, that's correct.

10 Q. And in fact what you were telling them here in paragraph
11 3 -- could we highlight paragraph 3, please, just bring it up?

12 What you were telling them here about global Internet
13 strategy charges being roughly \$7.5 million, that \$7.5 million
14 referred to something completely different, correct?

15 A. It did.

16 Q. Refco had purchased computer equipment for \$7.5 million,
17 correct?

18 A. I don't recall.

19 Q. And had moved the receivable -- moved the expense for the
20 computer equipment up to RGHI, correct?

21 A. I do not recall if it was computer equipment, but this is
22 the shifting of expense, yes.

23 Q. So you had shifted some expenses that Refco had up toward
24 RGHI, correct?

25 A. Yes.

Caidcol3b

Trosten - cross

1 Q. And you called that a global Internet strategy, correct?

2 A. That is correct.

3 Q. You couldn't tell them the truth, correct?

4 A. We could have told them the truth.

5 Q. But you didn't?

6 A. We did not.

7 Q. Paragraph 5: "I am not aware of any bad debt or credit
8 losses included in the trading income or loss accounts of RGHI
9 consolidated."

10 You don't know today whether that is true or false;
11 you don't remember anymore, correct?

12 A. That is correct.

13 Q. But it didn't matter at the time, correct.

14 A. That is correct.

15 Q. And you claim, with respect to paragraph 1, where it says
16 "This was further confirmed with discussions with legal
17 counsel," that you called up Joe Collins, right?

18 A. Yes.

19 Q. And you said to him, Joe, we've got \$700 million in
20 intercompany debt; that's your claim, correct?

21 A. Yes.

22 Q. And you claim that he said, it's enforceable, Rob, correct?

23 A. Yes.

24 Q. And he didn't ask any questions?

25 A. No.

Caidcol3b

Trosten - cross

1 Q. You didn't have to tell the truth in this paragraph,
2 correct?

3 A. No, I didn't have to.

4 Q. Anybody else on the phone call?

5 A. Not to my knowledge.

6 Q. Did you take any notes of the phone call?

7 A. I don't remember.

8 Q. You haven't seen them since Refco collapsed?

9 A. No.

10 Q. The government hasn't shown you your notes of the phone
11 call?

12 A. No.

13 Q. The only thing we have --

14 MR. CHERNOFF: Your Honor, I'm sorry. I just have to
15 object to the form of the last question. It should be the
16 government hasn't shown you any note, as opposed to your notes.

17 Correct?

18 THE COURT: I think the question actually was the
19 government hasn't shown you your notes of the phone call.

20 MR. CHERNOFF: That assumes a fact not in evidence
21 because there aren't any notes.

22 THE COURT: Mr. Schwartz.

23 BY MR. SCHWARTZ:

24 Q. There are no notes of the phone call, to your knowledge,
25 correct?

Caidcol3b

Trosten - cross

1 A. Correct.

2 Q. All this jury has for whether this is a true paragraph or a
3 false paragraph is the good word of Robert Trosten?

4 A. That is correct.

5 Q. You sent the letter quoting your lawyer to Ernst & Young,
6 correct?

7 A. Not a quote.

8 Q. Saying that you had confirmed something with him, you sent
9 that to Ernst & Young, correct?

10 A. Yes, I did.

11 Q. Did you give Mr. Collins the courtesy of putting a cc on
12 the letter so he could see that you were telling Ernst & Young
13 about a conversation you claim to have had with him?

14 A. No.

15 Q. So Mr. Collins didn't receive this, correct?

16 A. To the best of my knowledge, no.

17 Q. And this is the only time you claim to have had a
18 conversation with Joe Collins about the size of the hole,
19 correct?

20 A. Yes.

21 Q. So all we have is this letter and your testimony for that?

22 A. As far as I'm aware.

23 Q. Then the next year you sent a second letter, correct?

24 A. Yes.

25 Q. And that's Government Exhibit 3017 -- 3016.

Caidcol3b

Trosten - cross

1 Can we bring that up?

2 And this is a similar letter, correct?

3 A. Correct.

4 Q. Answering questions that they had the next year, correct?

5 A. Yes.

6 Q. And your testimony is this time you didn't bother to call
7 Joe, right?

8 A. That is correct.

9 Q. Let's talk about the history of this conversation.

10 In round one you never told the government about this
11 conversation, correct?

12 A. That is correct.

13 Q. In round one the government showed you Government Exhibit
14 3016 and asked you questions about it, correct?

15 A. To the best of my recollection, that is correct.

16 Q. That's the document that refers to discussions with legal
17 counsel previously, correct?

18 A. Yes.

19 Q. And when you saw that language sitting in the office of the
20 prosecutor, you didn't say now I remember a call I had the
21 previous year with Joe Collins that that's referring to, did
22 you?

23 A. I wasn't asked and didn't answer.

24 (Continued on next page)

25

CAIPCOL4

Trosten - cross

1 BY MR. SCHWARTZ:

2 Q. You didn't tell them about that call when you were shown
3 this document and they asked you questions about it, correct?

4 A. Yes.

5 Q. And they were trying to find out who knew about the fraud?

6 A. Yes.

7 Q. And then you got indicted after turning away the deal,
8 right?

9 A. Yes.

10 Q. And Mr. Bennett pleaded guilty in February of 2008,
11 correct?

12 A. At or around.

13 Q. And you had made up your mind that you were never going to
14 go back to the government and cooperate if it involved
15 cooperating against Phil Bennett, correct?

16 A. Yes, that was in my mind, yes.

17 Q. And that's because Phil Bennett was like a father figure to
18 you, correct?

19 A. That is correct.

20 Q. And now, Phil Bennett was not a problem anymore because he
21 had pleaded guilty, right?

22 A. Yes.

23 Q. But you had also learned that two months before Phil
24 Bennett pleaded guilty, Joe Collins had been charged in this
25 case, correct?

CAIPCOL4

Trosten - cross

1 A. At or around, yes.

2 Q. And so your first meeting in round two, Mr. Trosten, the
3 first meeting, you went in and told them about this
4 conversation you claim to have taken place with Joe Collins; is
5 that correct?

6 A. Yes.

7 Q. You'd just forgotten about it in round one, right?

8 A. Wasn't asked and didn't discuss it.

9 Q. And you told them about it on one day and you signed a
10 cooperation agreement the next?

11 A. At or around, that's correct.

12 Q. And that's the only conversation you claim to have ever had
13 with Mr. Collins about the hole?

14 A. Yes.

15 Q. How big was the hole in 1999?

16 A. 1999, initially when we uncovered it, it was about 405
17 million so it would have been in excess of that.

18 Q. In excess of 400 to \$500 million?

19 A. Yes.

20 Q. And it's fair to say that the because of the hole -- Did
21 you say 405 or 4 to 500 --

22 A. I said it was 405 million when we initially uncovered it;
23 so it would have been at or around that number.

24 Q. I misheard you. I apologize. So it was more than
25 \$400 million?

CAIPCOL4

Trosten - cross

1 A. Yes.

2 Q. And because of the hole, Refco was in financial difficulty,
3 correct?

4 A. Yes.

5 Q. Refco was broke, correct?

6 A. I don't know that they were broke.

7 Q. They had a negative net worth, if you took away the hole,
8 correct?

9 A. That is correct.

10 Q. If you had done honest accounting, it would have shown that
11 Refco was broke, correct?

12 A. If you're defining "broke" as negative net worth, that's
13 correct.

14 Q. It would have shown they were in financial difficulty,
15 correct?

16 A. Yes.

17 Q. Now, the government showed you Government Exhibit 612, and
18 put it up on the screen. I mean 1612. And do you remember
19 they asked you questions about RGHI being a non-operating
20 company, correct?

21 A. Yes.

22 Q. And now I'm going to show you a paragraph the government
23 didn't show you, paragraph 3. This is the letter --

24 MR. CHERNOFF: I object to Mr. Schwartz's statement.
25 The whole document is in evidence.

CAIPCOL4

Trosten - cross

1 Q. Did the government ask you --

2 THE COURT: Stop, stop. One at a time.

3 MR. SCHWARTZ: I'll withdraw the question.

4 THE COURT: All right.

5 Q. Did the government ask you any questions, when you
6 testified here yesterday, about paragraph 3?

7 A. Not that I remember, no.

8 Q. Now, can we just see who this letter is from, up at the
9 top? I'm sorry, who it's to. It's to Joseph P. Collins at
10 Mayer Brown, right?

11 A. Yes.

12 Q. And if we turn to Page -- the next page and see who it's
13 from, it's from Phillip Bennett, correct?

14 A. Yes.

15 Q. And there are nobody cc'd on this letter, correct?

16 A. There is not.

17 Q. This is Phillip Bennett talking to Joe Collins,
18 person-to-person, with no one else, correct?

19 A. Yes.

20 Q. Let's see what Phil Bennett says to Joe Collins.

21 MR. SCHWARTZ: Can we blow up paragraph 3?

22 Q. Given the fact that it is a non-operating company, Refco
23 Group Holdings Capital is represented by the value of its
24 investment in Refco Group --

25 THE COURT: Slowly.

CAIPCOL4

Trosten - cross

1 Q. "Given the fact that," that's what they showed you
2 yesterday, right? Given the fact that it is -- I'm sorry.
3 They didn't show you this. They showed you another paragraph.

4 Let's read it slowly. "Given the fact that it is a
5 non-operating company, Refco Group Capital, i.e. Refco Group
6 Holdings Capital, i.e. net worth, is represented by the value
7 of its investment in Refco Group, Limited."

8 Please highlight the next sentence.

9 "At May 31, 1999, the net worth of Refco Group,
10 Limited totaled \$446 million." That is a lie, correct?

11 A. That's correct.

12 Q. That is Phillip Bennett lying to his lawyer about the net
13 worth of Refco, correct?

14 A. Yes.

15 Q. Because if you know about the hole, there's a negative net
16 worth, correct?

17 A. If you write off the hole, there is a negative net worth,
18 correct.

19 Q. He's telling him this is a valuable company, correct?

20 A. He's telling him that Refco's net worth was 446 million.

21 Q. You were pretty proud to be working for a company with a
22 half a billion dollars' net worth, at least what the world
23 thought was a half a billion dollars' net worth, right?

24 A. No, I didn't look at it like that.

25 Q. Let's take a look at the sentence that begins -- let's

CAIPCOL4

Trosten - cross

1 highlight the sentence that begins, "The combined value" and
2 goes on to the next page.

3 "The combined value of Refco Group Holdings,
4 90 percent interest in the equity of Refco Group, Limited, plus
5 the principal of the subordinated note is, therefore,
6 approximately \$418 million." A lie, correct?

7 A. That is correct.

8 Q. Now, I want to take a look at paragraph 5. BAWAG had
9 loaned money to RGHI, correct?

10 A. Yes.

11 Q. That's what paragraph 5 is about, correct?

12 A. It's not highlighted for me.

13 Q. I'm sorry, sir?

14 A. I don't see it highlighted. I'm just reading the note.

15 Q. The jury has it. You don't have it in front of you?

16 A. I'm just looking at it for one moment. I see it.

17 Q. And that's about the BAWAG loan, isn't it?

18 A. I don't know.

19 Q. Take a look at paragraph 4 and then read paragraph 5, and
20 see if that helps you.

21 A. Thank you. It does, thank you.

22 Q. So paragraph 5, let's go back to paragraph 5, is about the
23 loan that BAWAG had made to RGHI, correct?

24 A. Yes.

25 Q. And what Mr. Bennett is saying to his lawyer in this

CAIPCOL4

Trosten - cross

1 private communication is that, "In terms of the commercial
2 viability of the loan, interest and principal can readily be
3 covered by remittance payments -- of dividend payments or
4 distributions from Refco Group, Limited, and its subsidiaries
5 to Refco Group Holdings, its parent company."

6 Did I read that correctly?

7 A. "Its parent entity."

8 Q. "Its parent entity." Thank you.

9 He's telling him here, don't worry about the loan.
10 We're getting distributions from Refco Group, up to RGHI that
11 will cover the loan, right?

12 A. He is saying that he'll make payments via distributions,
13 that's correct.

14 Q. The money is going the wrong way, right? There were no
15 distributions to RGHI?

16 A. There were distributions to RGHI.

17 Q. RGHI was borrowing from Refco, correct? That's where the
18 hole was?

19 A. That's correct.

20 Q. And would the distributions to RGHI cover the BAWAG loan?

21 A. No.

22 Q. It's a lie, correct?

23 A. Yes.

24 Q. He's lying to his lawyer in writing with no one else on the
25 document, correct?

CAIPCOL4

Trosten - cross

1 A. Yes.

2 Q. Let's call up Government Exhibit -- By the way, did Phil
3 Bennett ever say to you, "Joe Collins is no dummy"?

4 A. Not that I remember.

5 Q. From evidence in this letter, it wouldn't have appeared
6 that he believed that, correct?

7 MR. CHERNOFF: Objection, your Honor.

8 THE COURT: Sustained.

9 Q. Government showed you Government Exhibit 335 yesterday.

10 MR. SCHWARTZ: Can we call that up, please.

11 Q. These are notes of Joe Collins of a phone call with Phillip
12 Bennett on April 12, '04, right?

13 A. Yes.

14 Q. You weren't on that call?

15 A. Not that I remember, no.

16 MR. SCHWARTZ: Can we just highlight where it says "no
17 shareholder loans as of closing"?

18 Q. You have no idea what Phil Bennett told Joe Collins in that
19 phone call about that, correct?

20 A. I do not.

21 Q. But the words are, no shareholder loans at the closing,
22 correct?

23 A. Correct.

24 Q. Now, between 2000 and 2004, Refco went on an acquisition
25 spree, correct?

CAIPCOL4

Trosten - cross

1 A. That is correct.

2 Q. It went out and bought a lot of different businesses,
3 correct?

4 A. Yes.

5 Q. And you would agree that when a company does that in a
6 short period of time, to the outside world, that's a sign of
7 financial health, correct?

8 A. In my opinion, yes.

9 Q. And when you sell a company -- when you went to sell the
10 company, one of the things you told prospective buyers, to
11 demonstrate how healthy Refco was, is look at all the companies
12 we've recently purchased, correct?

13 A. Yes.

14 Q. So in 2000, you bought a broker called Lind-Waldock, right?

15 A. That is correct.

16 Q. And Refco was represented by Joe Collins, right?

17 A. Yes.

18 Q. And in the same year you bought another broker called LFG,
19 correct?

20 A. That is correct.

21 Q. And Refco was represented by Joe Collins, correct?

22 A. Yes.

23 Q. In 2001, you bought a company called Main Street Trading,
24 correct?

25 A. I don't recall the year, but we did acquire Main Street

CAIPCOL4

Trosten - cross

1 Trading.

2 Q. And Refco was represented by Joe Collins, correct?

3 A. Yes.

4 Q. In 2011, you bought a company called First Options,
5 correct?

6 A. Did you say 2011?

7 Q. I'm sorry, 2001.

8 A. Again, I don't recall the years, but yes, we did acquire
9 the company.

10 Q. And Joe Collins was your lawyer again?

11 A. Yes.

12 Q. He and his team at Mayer Brown, right?

13 A. Yes.

14 Q. And in about 2002, you bought a company called SLK or a
15 division of it, correct?

16 A. A division of it is correct.

17 Q. And Joe Collins was your lawyer?

18 A. Yes.

19 Q. In 2003, you bought a company called Mac Futures, an
20 English company, correct?

21 A. Yes.

22 Q. They were about to expand in Europe, right? You were
23 expanding to Europe? I'm sorry.

24 A. We were already in Europe. We were expanding there, yes.

25 Q. And Joe Collins was your lawyer?

CAIPCOL4

Trosten - cross

1 A. That is correct.

2 Q. In 2003, you bought a company called Carlton Brokerage in
3 England; is that correct?

4 A. Yes.

5 Q. And Joe Collins was your lawyer?

6 A. Yes.

7 Q. And then in the same year you bought a company called
8 Friedberg Mercantile Group, a Canadian company, correct?

9 A. Or a portion of it, yes.

10 Q. You bought a portion of it, correct?

11 A. Yes.

12 Q. And Joe Collins was your lawyer?

13 A. Yes.

14 Q. And then you bought an English brokerage called Trafalgar
15 Commodities in 2003, correct?

16 A. Again, I don't recall the year, but we did.

17 Q. And Joe Collins was, again, your lawyer?

18 A. Yes.

19 Q. And then you asked Credit Suisse to put all these
20 transactions into promotional materials, correct?

21 A. Yes.

22 Q. So that the prospective buyers could see how healthy you
23 have been from all the acquisitions you had made, yes?

24 A. When you use the term promotional materials, are you
25 referring to the notes about acquisitions or are you referring

CAIPCOL4

Trosten - cross

1 to the actual documents themselves?

2 Q. The documents that Credit Suisse -- What Credit Suisse was
3 sending to prospective buyers.

4 A. Well, they were not sending the entire agreements, those
5 were going into a data room for the prospective buyers to look
6 at.

7 Q. But the names of the acquisitions were in the promotional
8 materials?

9 A. Yes.

10 Q. Because you wanted the prospective buyers to look at, see
11 this buying binge we've been on and how healthy we are,
12 correct?

13 A. Yes.

14 Q. And by the way, there's a lot of legal work that went into
15 those acquisitions; is that correct?

16 A. When you say "legal work" --

17 Q. When you made the acquisitions.

18 A. Do you mean legal due diligence or legal work in drafting?

19 Q. Mayer Brown did a lot of work in connection with those?

20 A. They did.

21 Q. And they billed by the hour, correct?

22 A. Yes.

23 Q. In fact, they billed by the hour and gave Refco a discount,
24 correct?

25 A. Yes.

CAIPCOL4

Trosten - cross

1 Q. And during the same period of time, there were litigations,
2 correct?

3 A. Yes.

4 Q. And Mayer Brown represented you in some of those, correct?

5 A. That is correct.

6 Q. Not in all of them, correct?

7 A. Yes, that is correct.

8 Q. They weren't your only lawyer?

9 A. No, they were not. Mr. Schwartz, may I just ask a
10 question? When you said that they weren't our only lawyer,
11 were you referring to Refco?

12 Q. Yes.

13 A. Yes. Thank you.

14 Q. Yesterday you talked to us about Victor Niederhoffer,
15 right?

16 A. Correct.

17 Q. And other than requesting documents -- and the Victor
18 Niederhoffer, the incident that caused Refco to lose money took
19 place in 1997, correct?

20 A. That is correct.

21 Q. And you had no conversations at all with Mr. Collins at
22 that time, correct?

23 A. Yes, that is correct.

24 Q. And, in fact, other than requesting documents from him in
25 2001 that had been drafted years earlier, you never talked to

CAIPCOL4

Trosten - cross

1 Joe Collins about Niederhoffer, correct?

2 A. I don't recall any other conversations, no.

3 Q. And you have claimed to this jury that \$21 million in
4 losses were kept on the books at Refco at the time, correct?

5 A. That is incorrect.

6 Q. What's the \$26 million?

7 A. Pardon me?

8 Q. Well, 71 was moved off the books.

9 A. I thought you had said 21 million.

10 Q. 26, I'm sorry.

11 A. That's correct.

12 Q. And you know that because somebody told you?

13 A. I know what?

14 Q. That it was \$26 million that was kept on the books?

15 A. I know it because I saw it.

16 Q. And the government -- and that \$71 million was moved
17 upstairs to RGHI to help create the hole, right?

18 A. Or an affiliate of RGHI but, yes, increasing the hole.

19 Q. So let's take them in two parts. Let's first discuss the
20 26 million that stays at Refco, and then let's discuss the 71
21 million that moves to RGHI. Now, the government showed you a
22 document yesterday containing Joe Collins' handwriting,
23 Government Exhibit 300.

24 Can we call that up, please?

25 And it appears at the top to be a conversation

CAIPCOL4

Trosten - cross

1 starting on 11-5-97, TW Phil Bennett, right?

2 A. On November 5th, '97.

3 Q. That's what it says. You don't know whether it's a
4 conversation with Bennett or not. You know that's just what it
5 says, right?

6 A. That is right.

7 Q. You don't know anything about if this was a conversation,
8 you don't even know if it was a conversation, right?

9 A. I do not.

10 Q. And you don't know why these numbers were put here or who
11 said what to cause them to be put there, correct?

12 MR. CHERNOFF: Your Honor, I just ask Mr. Schwartz,
13 this is not the witness' notes. I don't know why he's yelling
14 at the witness about it.

15 MR. SCHWARTZ: I didn't mean to yell. Could I have
16 the question read back in a more polite voice, please.

17 THE COURT: Question: And you don't know why these
18 numbers were put here or who said what to cause them to be put
19 there, correct?

20 A. That is correct.

21 Q. And the government pointed out two numbers to you on this
22 sheet.

23 Can we move down a little bit?

24 The first is where it says -- first, is the 9.7,
25 correct?

CAIPCOL4

Trosten - cross

1 A. Yeah, I can't tell if it's 9.7 or 97, but yes.

2 Q. Let's blow it up. Does it look like 9.7 now, sir?

3 A. It does.

4 Q. So they asked you about -- they showed you the 9.7. It's
5 not 97, right?

6 A. It appears that way.

7 Q. And they asked you about -- they showed you the 26, right?

8 A. Yes.

9 Q. And you don't know what, if anything, was said about that
10 26, correct?

11 A. I do not.

12 Q. All you know is that has the name Niederhoffer next to it,
13 right?

14 A. Yes.

15 Q. And then --

16 MR. CHERNOFF: Your Honor, we'll stipulate that the
17 witness doesn't know more than what he's shown.

18 THE COURT: Yeah, we probably don't have to keep
19 asking him if he heard any of this because he said he didn't.

20 Q. The next line says "4.5 million in restricted stock,"
21 correct?

22 A. Yes.

23 Q. Victor Niederhoffer was going to give assets to Refco to
24 help cover the loss, right?

25 A. Yes.

CAIPCOL4

Trosten - cross

1 Q. And \$4.5 million of restricted stock refers to the Navtech
2 stock we talked about before, correct?

3 A. And possibly others. I don't know.

4 Q. But that -- Can we go down to the next one? And then it
5 says "27.8 million total possible recovery," correct?

6 A. Yes.

7 Q. If you subtract 27 -- 26 from 27.8 million, you get a
8 positive number, not a negative number; is that correct?

9 A. If you subtract 26 from 27.8?

10 Q. Yes.

11 A. Yes, you'd have a positive number.

12 Q. Take it down.

13 A. Can I have a quick break when we can? Whenever?

14 THE COURT: Is this a convenient time to have a
15 five-minute break, Mr. Schwartz?

16 MR. SCHWARTZ: Absolutely.

17 THE COURT: All right. Five minutes, ladies and
18 gentlemen. You know what the rules are. Thank you.

19 (Jury exits)

20 THE COURT: Anything else on the record, counsel?

21 MR. SCHWARTZ: No, your Honor.

22 MR. CHERNOFF: No, your Honor.

23 MR. LEVY: No, your Honor.

24 (Recess taken)

25 THE COURT: Thank you, counsel. May we bring the

CAIPCOL4

Trosten - cross

1 jurors in.

2 (Jury enters)

3 THE COURT: Welcome back, ladies and gentlemen. Thank
4 you. Won't you be seated. We'll continue with the
5 cross-examination of the witness. Mr. Schwartz?

6 MR. SCHWARTZ: Thank you, your Honor.

7 BY MR. SCHWARTZ:

8 Q. Mr. Trosten, before we left, we were going to begin to
9 discuss the \$71 million that was -- became part of the hole
10 from the Niederhoffer transaction. The way that became part of
11 the hole is an assignment was paid, correct?

12 A. Yes.

13 Q. The loss was assigned from Refco to RGHI, correct?

14 A. I thought it was Wells, who was an affiliate of RGHI,
15 right.

16 Q. Either RGHI or Wells, correct?

17 A. Yes.

18 Q. And they were a parent of them, correct?

19 A. That is correct.

20 Q. And I believe you were testifying yesterday, and just
21 reviewing it briefly, Refco was at consolidating group level,
22 correct?

23 A. When you say Refco was at the consolidated level?

24 Q. Refco Group, Limited, had a number of different affiliates,
25 correct?

CAIPCOL4

Trosten - cross

1 A. Yes.

2 Q. Below the parents, correct?

3 A. Below Refco and below RGHI, yes.

4 Q. Maybe I can make this a little clearer.

5 A. Please.

6 MR. SCHWARTZ: Your Honor, is there a good place to
7 put this?

8 THE COURT: I suppose right here, as long as the
9 jurors can see it.

10 MR. SCHWARTZ: Okay. I'm also worried that the
11 witness can see it.

12 Q. Are you able to see this, Mr. Trosten?

13 A. Yes, I am. Thank you.

14 Q. Down here is Refco. The parent is RGHI -- one of the
15 parents is RGHI, correct?

16 A. Yes.

17 Q. And Wells is an affiliate of RGHI?

18 A. Yes.

19 Q. And then there was something that you called -- Explain to
20 us again what consolidation meanings?

21 A. The consolidation of Refco is consolidating its
22 subsidiaries.

23 Q. So down here, there are subs?

24 A. That is correct.

25 Q. And there were a number of them, right?

CAIPCOL4

Trosten - cross

1 A. Yes.

2 Q. And you explained yesterday that the parent was outside of
3 the consolidated group, correct?

4 A. That is correct.

5 Q. So if I can draw a line here. And would it be fair to say
6 that below the line is the consolidated group and above the
7 line is the parent?

8 A. Okay.

9 Q. Is that fair? I don't want to do this if it doesn't
10 reflect accurately --

11 MR. CHERNOFF: Objection to the form, "fair." That's
12 what Mr. Schwartz has drawn.

13 Q. You understand what I've just drawn, right?

14 A. I did.

15 Q. And it doesn't seem inaccurate as I've just explained it to
16 you, correct; the way we've just explained it?

17 A. I understand it.

18 Q. Okay. And the financials of all these companies below the
19 line are consolidated, correct?

20 A. Yes.

21 Q. And what that means that if one company has a loss and it
22 assigns it to another company below the line, the financial
23 statements don't change, right?

24 A. That is correct.

25 Q. Because they're the financial statements of Refco?

CAIPCOL4

Trosten - cross

1 A. And because that would eliminate the consolidation.

2 Q. That's the idea of consolidation, right?

3 A. Yes.

4 Q. But if something is moved up above the line, it comes off
5 the books of Refco, right?

6 A. It would still be on the books of Refco as an asset, just
7 from a different entity.

8 Q. You have a loss, and if you move it up to Refco and get a
9 loan in return, you've turned the loss into an asset, correct?

10 A. If you move it up to RGHI, that is correct.

11 Q. So if you move it here, it stays as a loss, correct?

12 A. Yes.

13 Q. If you move it up here, it becomes an asset and the company
14 looks better, correct?

15 A. That is correct.

16 Q. And what you understood happened here is Niederhoffer,
17 there was \$71 million in Niederhoffer, and that moved upstairs,
18 correct?

19 A. That was my understanding, yes.

20 Q. Through an assignment, correct?

21 A. An assignment, yes.

22 Q. And I'm writing the word "assignment."

23 MR. SCHWARTZ: Can I put a sticker on this, please?

24 Do we have a sticker? Just so we can identify it for the
25 record, your Honor.

CAIPCOL4

Trosten - cross

1 THE COURT: All right. You can put it on later. Go
2 ahead.

3 Q. And the assignment is a legal document, right?

4 A. Yes. In my opinion.

5 Q. Let me show you what we've marked as Defense Exhibits 134
6 and 135.

7 MR. SCHWARTZ: And I believe -- Your Honor, I believe
8 the government is prepared to stipulate that these are from the
9 files of Refco.

10 MR. CHERNOFF: Yes, your Honor.

11 MR. SCHWARTZ: And that where it says "Government
12 confidential treatment requested by Refco," that was put on in
13 connection with the production in this case.

14 THE COURT: Yes.

15 Q. Now, 134 purports to be an assignment of the Niederhoffer
16 loss to Refco, Inc., correct?

17 A. Assignment of the loss from Refco, Inc., did you say?

18 Q. I'm sorry. Assignment of the loss to Refco Group Holdings?

19 A. Yes.

20 THE COURT: This one says 135 on it, Mr. Schwartz.

21 MR. SCHWARTZ: There's a 134 and a 135. I should have
22 given you two, your Honor. I apologize.

23 THE COURT: Thank you.

24 MR. SCHWARTZ: You're welcome.

25 A. Mr. Schwartz?

CAIPCOL4

Trosten - cross

1 Q. Yes, sir.

2 A. I don't have 135.

3 Q. I got very confused walking back and forth. You may have
4 the judge's.

5 A. I have 134 only.

6 Q. I think I only brought up one. I gave you one and I gave
7 the Judge one. I apologize.

8 A. Thank you.

9 Q. You're welcome. Let's start again.

10 134 is an assignment agreement that's signed by Phil
11 Bennett, correct?

12 A. That is correct.

13 Q. And 134 is another assignment group, correct, also signed
14 by Phil Bennett?

15 A. That is correct.

16 MR. SCHWARTZ: We offer it.

17 MR. CHERNOFF: No objection.

18 THE COURT: Received.

19 (Defendant's Exhibits 134 and 135 received in
20 evidence)

21 Q. So let's take a look first at 134, first paragraph.

22 THE COURT: Mr. Schwartz, you talk. They can move.

23 Q. Okay. 134 is an assignment from Refco, Inc. to Refco Group
24 Holdings, Inc., correct?

25 A. Yes.

CAIPCOL4

Trosten - cross

1 Q. And Refco Group Holdings, Inc. is the company that later
2 became Refco Group, Limited, right?

3 A. No.

4 MR. SCHWARTZ: May I have a second, your Honor?

5 THE COURT: Yes, sir.

6 Q. Sir, this is Refco, Inc. assigning to RGHI, correct?

7 A. Yes.

8 Q. And Refco, Inc., it's below this line, correct?

9 A. Yes.

10 Q. So this is the -- this concerns the Niederhoffer loss. You
11 can see that in the first paragraph, correct?

12 A. Yes.

13 Q. And it's being assigned, as you said yesterday and today,
14 outside the groups so the loss is taken off the books, right?

15 A. That's what this agreement would do, yes.

16 Q. And it's signed by Phil Bennett, correct?

17 A. Yes.

18 Q. Take a look at 135. 135 is an assignment from Refco Group,
19 Inc. to Wells, limited, correct?

20 A. I believe it says Refco, Inc. to Wells, Limited.

21 Q. I'm sorry. Refco, Inc. to Wells, Limited. So again,
22 that's another assignment, another document showing the
23 assignment from below the line, above the line, correct?

24 A. That is correct.

25 Q. And the loss is being removed from the books below the

CAIPCOL4

Trosten - cross

1 line, correct?

2 A. Yes.

3 Q. And both of these documents show that the amount that is
4 being assigned is \$71 million, correct?

5 A. Yes.

6 Q. Is it fair to say that you don't know which of these
7 documents is the actual assignment, correct?

8 A. I just know what I was told.

9 Q. You were told that \$71 million had been assigned from below
10 the line to above the line, correct?

11 A. I was told by my manager at the time, Steve Rossi, that it
12 was assigned to Wells, Limited.

13 Q. To Wells, Limited. So let's just take a look at that one.
14 This document would do exactly what Mr. Rossi told you had been
15 done, correct?

16 A. Yes.

17 Q. And it is signed -- it is dated October 28, 1997, on the
18 front?

19 A. That is correct.

20 Q. And that's about the time of the Niederhoffer loss, right?

21 A. Yes.

22 Q. So if what Mr. Rossi told you was true, it appears that
23 this document is the document that made the assignment,
24 correct?

25 A. Based on my discussion with Mr. Rossi, yes.

CAIPCOL4

Trosten - cross

1 Q. By the way, is Niederhoffer spelled correctly here?

2 A. Niederhoffer is spelled several times. I don't know.

3 Q. Well, the first time it's spelled i-e?

4 A. I don't know.

5 Q. Now, I'm going to show you what has been marked as defense
6 Exhibit 136 for identification.

7 MR. SCHWARTZ: And the government has stipulated, your
8 Honor, that this is a fax from Mayer Brown to Refco and we
9 offer it.

10 MR. CHERNOFF: No objection.

11 THE COURT: Received.

12 (Defendant's Exhibit 136 received in evidence)

13 Q. Okay. Have patience with me, sir, please.

14 You can see that this fax has JP Collins on it,
15 correct?

16 A. I do.

17 Q. And you actually recognize Joe's handwriting on it,
18 correct?

19 A. Not what you highlighted, but I do recognize the
20 handwriting.

21 Q. Where it says "Refco/Niederhoffer" that's Joe's
22 handwriting?

23 A. Yes.

24 Q. And you see that it is faxed on October 28th, correct?

25 A. I do.

CAIPCOL4

Trosten - cross

1 Q. That's the same date as the assignment to Wells that we
2 just saw, correct?

3 A. Yes.

4 Q. And do you see, as well, that it is faxed to a number that
5 I take it, sir, you recognize as Refco's fax number?

6 A. I believe that's correct.

7 Q. Now, if you turn the page, you will see that Mr. Collins is
8 sending this fax to Mr. Bennett; is that correct?

9 A. That's what it suggests, yes.

10 Q. And if you turn the page again, you see that it is also an
11 assignment agreement, correct?

12 A. I see it, yes.

13 Q. It's a form of assignment agreement, is that what it
14 appears to be?

15 A. Yes.

16 Q. And the numbers are left out where, in the one we just saw,
17 it said \$71 million; in this one, there's a blank, correct?

18 A. That is correct.

19 Q. And here, the assignment is being made between Refco, Inc.
20 and Refco Capital Corporation; do you see that?

21 A. Well, it's not an executed agreement, but I see that that's
22 what the assignment would do, yes.

23 Q. That's what the form says?

24 A. Yes, thank you.

25 Q. So the form then -- and that is all below the line,

CAIPCOL4

Trosten - cross

1 correct?

2 A. That is correct.

3 Q. So if this form were to become an assignment, actually be
4 filled out, the loss would not be moved off the books of Refco,
5 correct?

6 A. Refco consolidated, that's correct.

7 Q. And the hole wouldn't have been deeper, correct?

8 A. Yes, that is correct.

9 Q. So now, can we -- And by the way, now can we compare --
10 Well, before we compare, do you see at the bottom of this page,
11 in the lower left-hand, right under the text, there is what is
12 called a footer; is that correct?

13 A. Yes. Based on my knowledge, that's a footer.

14 Q. And a footer, based on your knowledge, is a notation that
15 is made by a word processing system to keep track of the
16 document, correct?

17 A. That is correct.

18 Q. And in your experience dealing with Joe Collins, am I
19 correct that when he sent legal documents to Refco, they
20 typically had footers, correct?

21 A. I would say they typically did. Not necessarily always,
22 but typically they did, yes.

23 MR. SCHWARTZ: Can we compare -- Can we put up two
24 documents at the same time, please? I would like to put up 135
25 and 136 next to each other. Can we turn two pages into 136?

CAIPCOL4

Trosten - cross

1 Q. Now, sir, the one on the left is the one that is actually
2 signed, No. 135, by Phil Bennett that moved the loss out of the
3 hole, correct -- moved the loss into the hole?

4 A. That is correct.

5 Q. The one on the right is the form sent by Mr. Collins that,
6 if executed, would not have moved the loss into the hole,
7 correct?

8 A. That is correct.

9 MR. SCHWARTZ: Can we blow up the first paragraph of
10 each, starting with -- right above that, starting with
11 "Assignment," the date and "The Witnesseth," the first
12 paragraph.

13 Q. Now, 135, the one that moved it into the hole is on the
14 bottom and 136 is on the top. Do you recognize, sir, that
15 those two documents have different fonts?

16 A. I do.

17 Q. And 136 -- or 135, the document that moved it into the hole
18 does not have a footer, correct?

19 A. No, it does not.

20 Q. In addition, there appears to be a typo in 135, in the
21 second line; is that correct? Do you see the word "the" is
22 capitalized?

23 A. Sorry, I didn't look at it.

24 Q. Well, forget whether it's a typo. On the top document,
25 "the" is in lower case, in one font, right?

CAIPCOL4

Trosten - cross

1 A. I'm just asking where you're looking. I'm sorry.

2 Q. I'm sorry, you're not seeing top and bottom, 136?

3 A. Oh, I see it now. Thank you.

4 Q. In 136 "the" is in lower case in one font, right?

5 A. That is correct.

6 Q. And in 135 "the" is in upper case in another font, correct?

7 A. That is correct.

8 Q. In 136, the document sent by Mr. Collins, Niederhoffer is
9 spelled e-i; do you see that?

10 A. I do.

11 Q. In 135, the document that moved the loss into the hole,
12 Niederhoffer is spelled i-e, correct?

13 A. That is correct.

14 Q. And in the top document, which is the one Mr. Collins sent,
15 the form that would not have moved it into the hole, which is
16 136, "witnesseth" has underlining under each letter, and in
17 135, the actual assignment that moved it into the hole, is
18 fully underlined, correct?

19 A. Yes.

20 Q. And the word "witnesseth," like the rest of the document,
21 is in a different font, correct?

22 A. Between the two documents?

23 Q. Yes.

24 A. Yes, that's correct.

25 Q. And is it a fact, sir, that other than the changes that

CAIPCOL4

Trosten - cross

1 I've just shown and the \$71 million, the two documents are
2 identical?

3 MR. CHERNOFF: Objection, foundation.

4 Q. Would you compare them?

5 A. I'm sorry?

6 Q. Would you compare the two documents and tell me if they are
7 the same?

8 THE COURT: Do you really want the witness to sit here
9 and do this?

10 MR. SCHWARTZ: That's fine.

11 Q. Isn't it a fact, sir, that what happened with Niederhoffer
12 is Joseph Collins sent Phil Bennett --

13 MR. CHERNOFF: Foundation, objection. He's asking the
14 witness what Joe Collins sent.

15 THE COURT: I know. The foundation, do we have any
16 reason to think this witness knows?

17 MR. SCHWARTZ: This witness was in many conversations
18 about Mr. Collins.

19 THE COURT: I'm not sure you can ask the question
20 unless you know the answer on this one.

21 MR. SCHWARTZ: Your Honor, why is a good faith basis
22 not sufficient?

23 THE COURT: Well, if the good faith basis is that this
24 witness was in a lot of conversations, I'm not sure --

25 MR. SCHWARTZ: About this subject matter and about the

CAIPCOL4

Trosten - cross

1 assignment. I accept the Court's ruling, of course.

2 THE COURT: I think you could probably do it a
3 different way. Do you know such and such and such; do you know
4 how that happened? I know that's not classic cross, but --

5 MR. SCHWARTZ: Let me just see your Honor's verbiage.

6 (Continued on next page)

Caidcol5

Trosten - cross

1 BY MR. SCHWARTZ:

2 Q. Do you know if what happened here --

3 THE COURT: That's the same question, Mr. Schwartz.

4 Come on. That was good, though, I'll give you that.

5 MR. SCHWARTZ: Thank you, your Honor.

6 THE COURT: However --

7 MR. SCHWARTZ: I wasn't sure, then, what your Honor
8 was suggesting exactly.

9 THE COURT: I don't think we have a foundation for
10 knowing that this witness knows anything about it. And I don't
11 believe the fact that he engaged in lots of conversations is a
12 sufficient basis.

13 MR. SCHWARTZ: OK, your Honor. Then I won't go any
14 further.

15 THE COURT: Yes, sir.

16 BY MR. SCHWARTZ:

17 Q. But to just sum up one time, sir: The top document that
18 Collins sent keeps the loss at Refco, correct?

19 A. The form document?

20 Q. Yes.

21 A. That was filled in?

22 Q. Yes.

23 A. Yes.

24 Q. And the 175, which is signed by Phil Bennett and from
25 Refco's files and is in a different font, moves the loss to

Caidcol5

Trosten - cross

1 RGHI, correct?

2 A. Did you say 135 or 175?

3 Q. I mean 135 moves it to Wells?

4 A. Yes, that's correct.

5 Q. Out of the consolidated group and into the hole?

6 A. Correct.

7 MR. SCHWARTZ: Would you take it down, please.

8 (Pause)

9 Q. Yesterday do you recall being asked questions by the
10 prosecutor concerning what you had termed the short-term
11 finances?

12 A. Financing.

13 Q. Financing, I'm sorry.

14 A. Yes.

15 Q. And is it fair to say, sir, that you also heard them
16 referred to as round-trip loans?

17 A. I have.

18 Q. And as round robins?

19 A. Didn't really hear that term.

20 Q. And these started as undocumented loans, correct?

21 A. To the best of my knowledge.

22 Q. They started with BAWAG. BAWAG was the counterparty on
23 these transactions in the late '90s, correct?

24 A. BAWAG was a counterparty in the late '90s. I believe the
25 first loan transaction was not with BAWAG.

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Trosten - cross

1 Q. But BAWAG -- then the first loan transaction of this nature
2 took place while Tom Dittmer was the principal shareholder of
3 the company, correct?

4 A. That is correct.

5 Q. And after he had started, through his proprietary trading,
6 digging a bit in a hole, right?

7 A. I don't know when Tom was proprietary trading.

8 Q. And then there came a time when one of the counterparties
9 said it wanted the documents -- it wanted documents, right?

10 A. Based on my understanding.

11 Q. Was the first round trip loan done with a company called
12 MLC?

13 A. That is my understanding. I don't know if anything
14 happened prior to me coming to the firm.

15 Q. And do you know, sir, that MLC is a company that was
16 related to Cox and Dittmer?

17 A. I believe that is correct.

18 Q. There came a time where some of these loans were
19 documented, right?

20 A. Yes.

21 Q. And Mayer Brown documented them, correct?

22 A. Yes.

23 MR. SCHWARTZ: Can we see Government's Exhibit 2?

24 Q. Yesterday you walked us through this very chart, is that
25 right?

Caidcol5

Trosten - cross

1 A. Yes.

2 Q. And the leg -- there's three legs, right?

3 A. Yes.

4 Q. It goes -- the red is the first transaction and it goes
5 around to Refco and then comes back in the blue, correct?

6 A. Yes.

7 Q. And it is this third leg where it is taken off the books of
8 Refco for the short-term, correct?

9 A. The red?

10 Q. The red.

11 A. Yes.

12 Q. And you said yesterday that you didn't need to document the
13 third leg because RGHI had an account at Refco and it just was
14 kind of automatic, right?

15 A. That is correct.

16 Q. Am I correct, sir, that in the documents prepared by Mayer
17 Brown you have never seen anything that would have let them
18 know from the documents that RGHI had an account at Refco where
19 this was going, is that correct?

20 A. I have never seen that, that's correct.

21 Q. So Mayer Brown just from the documents -- anybody who saw
22 the documents -- would not know about the third leg, correct?

23 A. People at Refco would know because we know how our systems
24 work.

25 Q. People that didn't know how the Refco systems work -- in

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Trosten - cross

1 other words, somebody at Refco would know it's got to be,
2 right?

3 A. That's right.

4 Q. Because the computer system is going to make this happen?

5 A. It happens automatically, that's correct.

6 Q. If you are not at Refco you don't know that, correct, from
7 the document?

8 A. If you are not familiar with our systems, that's right.

9 Q. Can we put up Defense Exhibit 2?

10 This is what somebody who just has the documents would
11 see, correct?

12 A. Yes.

13 Q. And the leg that's missing is the leg that takes it off the
14 books of Refco, correct?

15 A. Takes what off the books?

16 Q. Takes the RGHI asset, the loan from RGHI, off the books for
17 the period of the loan, is that correct?

18 A. Yes.

19 Q. Now, all the customers saw were the documents, right?

20 A. I don't know what the customers saw.

21 Q. You do know that you never had a conversation with Joe
22 Collins about the third leg?

23 A. That is correct.

24 Q. And you did have conversations with Santo Maggio about the
25 third leg, correct?

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Trosten - cross

1 A. About how the process worked. We didn't call it a third
2 leg.

3 Q. You and Maggio and Bennett each time one of these was going
4 to happen would sit in a room and discuss it, correct?

5 A. One or both, that is correct.

6 Q. And you would discuss how much was going to get put into
7 the transaction and moved and how much -- and how much of the
8 hole was going to be moved around, correct?

9 A. Don't know that I partook in many of those conversations.
10 I would hand off the schedule and they would have their
11 discussions.

12 Q. But you did discuss this with Maggio, correct?

13 A. Yes.

14 Q. And discuss the third leg, meaning that's going to come
15 back to Refco with Bennett, correct?

16 A. Didn't discuss it in the context to which you refer. We
17 never talked about a third leg. We understood that this
18 transaction would have the effect of taking the RGHI debt off
19 of Refco's books and replace it with the customer.

20 Q. Because that's exactly what Bennett and Maggio had designed
21 it to do, correct?

22 A. To the best of my knowledge, yes.

23 Q. They were the creators of this, right?

24 A. To the best of my knowledge, yes.

25 Q. Now, you were also aware that Joe Collins gave this work to

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Trosten - cross

1 associates to work on, correct?

2 A. At some point in my career I was aware that others worked
3 on this, yes.

4 Q. And by "associates" I mean younger lawyers at the firm who
5 were not partners, correct?

6 A. I don't know their age but they weren't partners, yes.

7 Q. In your experience with Mayer Brown, the associates were
8 pretty good, right?

9 A. Yes.

10 Q. And one of them was an associate named Robert Monk,
11 correct?

12 A. I don't know the name.

13 Q. You do know the name Paul Koury, correct?

14 A. I do.

15 Q. And Paul was somebody who you had worked with on more than
16 one transaction?

17 A. Yes.

18 Q. And Paul was an associate of Joe's and worked on these loan
19 documents, right?

20 A. I just don't know.

21 Q. Now, yesterday you testified that no law firm apart from
22 Mayer Brown worked on these, correct?

23 A. That is correct.

24 Q. But the customers did get them, correct?

25 A. I'm sorry?

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Trosten - cross

1 Q. But the customers, the counterparties, did receive the
2 documents, correct?

3 A. I do not know.

4 Q. They had to sign them, didn't they?

5 A. The customer had to sign the loan agreements?

6 Q. Yes.

7 A. Yes.

8 Q. So they had to get the documents?

9 A. I'm assuming that they did. I didn't deal with the
10 customer except for that one year when I executed documents
11 when Phil left town.

12 Q. You are not only assuming now that the customers got them,
13 you assumed back then the customers got them, right?

14 A. Yes.

15 Q. And the customers had lawyers, right?

16 A. Again, I don't know.

17 Q. So when you testified yesterday that no other law firm
18 worked on this, you meant no other law firm representing Refco,
19 correct?

20 A. Correct.

21 Q. You don't know whether there were law firms representing
22 the customer who saw the same documents that were seen by the
23 lawyers at Mayer Brown, correct?

24 A. I do not know that, that's correct.

25 Q. Thank you.

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Trosten - cross

1 Yesterday you testified to a conversation that you had
2 with Joe Collins in which you called him and said send me the
3 documents to sign, correct?

4 A. Yes.

5 Q. Because Bennett had asked you to sign them on his behalf,
6 correct?

7 A. That is correct.

8 Q. That's the whole conversation that you remember, correct?

9 A. With whom?

10 Q. Joe.

11 A. Yes.

12 Q. Do you recall in round one that the government showed you
13 the loan document that you signed and asked you about it?

14 A. I recall they did show it to me. I don't recall what they
15 asked.

16 Q. Do you recall telling them you didn't remember signing it?

17 A. I do remember that.

18 Q. And you didn't remember the whole thing, correct?

19 A. I don't recall if I said I don't remember the whole thing.

20 Q. But you didn't remember the document, correct?

21 A. At the time that I saw it I didn't remember it.

22 Q. Then you came back in round two, correct, and you
23 remembered it in the very first meeting that you had with the
24 government, is that correct?

25 A. I don't know if I remembered it in round one later in those

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Trosten - cross

1 discussions or not.

2 MR. SCHWARTZ: Your Honor, this would be a good time
3 to break if it is convenient.

4 THE COURT: All right. Ladies and gentlemen, we will
5 break for the day now. I hope you will enjoy your early exit.

6 Would you follow the normal instructions? Leave your
7 exhibits here. Take your books into the jury room. Please
8 remember not to discuss the case among yourselves or with
9 anyone else. Do not do any research on the case.

10 We'll see you in the morning at 9:30 for your coffee,
11 to begin at 10.

12 Have a pleasant evening. And thank you for working
13 along with us today, ladies and gentlemen.

14 (Continued on next page)

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1 (Jury not present)

2 THE COURT: Anything else on the record, counsel?

3 MR. CHERNOFF: Not from the government, your Honor.

4 MR. SCHWARTZ: Your Honor, I am going to mark the
5 chart as Defense Exhibit 5.

6 THE COURT: Yes. Thank you.

7 MR. SCHWARTZ: And I will offer it when the jury is
8 back.

9 THE COURT: OK. Thank you.

10 MR. SCHWARTZ: I will just mark it.

11 THE COURT: Off the record.

12 (Discussion off the record)

13 MR. SCHWARTZ: Yes, your Honor. I do have one issue.

14 THE COURT: What is your issue?

15 Won't you be seated. You can step down, sir. Just
16 stay inside until the jurors are downstairs.

17 THE WITNESS: Thank you, your Honor.

18 (Witness excused)

19 THE COURT: Yes, sir.

20 MR. SCHWARTZ: We understand that the government is
21 going to be calling on Monday in this order -- I don't know if
22 there will be other witnesses before then -- Mr. Sullivan and
23 Mr. Berger. And I think we understand the Court's ruling, but
24 there is one issue that I think we have not fully vetted with
25 the Court, which is whether Mr. Sullivan will be permitted to

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1 testify that at the time of closing he did not -- because of
2 the legal steps that he had taken with Mayer Brown did not view
3 the PPA to be material, and that's an issue that we had not yet
4 fully argued, I think. If your Honor feels it is fully argued,
5 then we have, but I don't think we have.

6 THE COURT: Yes.

7 MR. LEVY: Your Honor, we are opposed to that.

8 THE COURT: I knew that.

9 MR. LEVY: Mr. Sullivan is going to be testifying I
10 think actually much more narrowly than he did the last time.
11 He is effectively going to testify about one early meeting that
12 he had with Mr. Bennett and Mr. Collins in which he himself
13 asked why isn't the PPA being disclosed. And that's awfully
14 close to it. I mean, he will be on and off the stand in five
15 minutes.

16 Why he would be allowed to opine that in his view the
17 PPA wasn't material is beyond me, particularly in light of the
18 Court's rulings with respect to every other witness in this
19 case.

20 MR. SCHWARTZ: Well, the government would like the
21 jury to believe that Mr. Sullivan attended one or two meetings,
22 had conversations in which he was told the PPA would not be
23 produced to the other side, and then nothing else happened.
24 And the fact is steps immediately began with Mr. Sullivan and
25 Mr. Collins to deal with the fact that Mr. Collins' client had

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1 said he didn't want to disclose it. And they took a number of
2 legal steps that in the end of the day Mr. Sullivan has told
3 the government he believes that at the time of the closing this
4 was not a material document.

5 THE COURT: I assume you're getting in the legal steps
6 other than through Mr. Sullivan?

7 MR. SCHWARTZ: I am going to --

8 THE COURT: Some of it is coming in and I assume you
9 will get more in --

10 MR. SCHWARTZ: We are going to get the documents that
11 were entered into through Mr. Sullivan. They are going to come
12 into evidence.

13 MR. LEVY: To the extent he is going to ask
14 Mr. Sullivan did you do X, did you do Y, I don't have any
15 problem with that.

16 I think if he starts to ask him why or what he thought
17 the net result was, I think that is problematic. We haven't
18 talked about this a lot since we argued this before. It is
19 particularly problematic in this case because of the privilege.
20 I can't turn around and ask -- first of all, it is irrelevant.
21 But even if it were relevant, I can't turn around and ask
22 Mr. Sullivan what he knew, what he didn't know in forming the
23 judgment of whether it was or wasn't material. I think your
24 Honor may have gotten a letter today or yesterday from --

25 THE COURT: Yes. I have a BAWAG letter.

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1 MR. LEVY: They are going to pop up and say whatever
2 opinions he formed on that were formed in discussions with
3 counsel and in discussions with the client and they can't get
4 into it. I'm not sure that the defense would like the answer,
5 I don't know, if we were to ask him based on everything that he
6 knows now how he feels about the materiality. It is just
7 irrelevant, in our view.

8 MR. SCHWARTZ: Your Honor, Mr. Sullivan -- and I say
9 this in good faith -- based solely on the documents will be
10 prepared to testify that as a result of the legal steps that he
11 took with Mr. Collins, he did not believe the PPA would have
12 any impact on Refco. There is nothing privileged about that.

13 You know, this is a red herring with privilege in this
14 case. Mr. Sullivan has come in. He has been interviewed. He
15 has not asserted privilege when he told the government --

16 THE COURT: I don't care about privilege. What I care
17 about is opinions.

18 MR. SCHWARTZ: May I?

19 The government brought out, and is going to bring out
20 from Mr. Tabor and Mr. Westra, as well as from Mr. Schoen,
21 their opinion that certain things were important. That goes to
22 materiality. And that opinion we haven't objected to, and that
23 opinion is relevant --

24 THE COURT: When you say "certain things were
25 important."

Caidcol5

1 MR. SCHWARTZ: The PPA would have been important to
2 them.

3 THE COURT: Right, or something like that; the fact of
4 related-party debt would have been important.

5 MR. SCHWARTZ: If I had known this, it would have been
6 important to me; Mr. Schoen testified to that. Mr. Schoen
7 testified to that.

8 That is subjective evidence, which is admissible on
9 the issue of materiality, which is an objective standard. The
10 jury is entitled to know that another witness in this case,
11 with an information set different from the information set of
12 the other government witnesses, and which we contend, and will
13 argue, is more complete than the information set that they had,
14 drew a different inference, that it was not important. That is
15 something that we are entitled to bring out, because they have
16 to make an objective determination. We will argue about who is
17 right and who is wrong, but that should be the jury's issue. I
18 don't get into the law.

19 THE COURT: All right. I will hear you more on this
20 tomorrow. But there is a difference between his saying I don't
21 think it was material and otherwise opining and his explaining
22 what in his view the various documents do.

23 MR. SCHWARTZ: But at the end of the day he should be
24 allowed to say that as a result of these documents and these
25 legal steps, in my view there was going to be no impact -- that

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1 goes to materiality, probative of materiality -- no impact on
2 Refco.

3 THE COURT: It is the "in my view" stuff. We have
4 been very careful not to get lawyers expressing their opinions.

5 MR. SCHWARTZ: We have Mr. Schoen expressing an
6 opinion on that this would have been important to know.

7 THE COURT: Well, first of all, he is not speaking as
8 a lawyer; he is he speaking as a participant with respect to
9 the facts.

10 MR. SCHWARTZ: So is this witness. He is or happens
11 to be a lawyer. But he is not offering a legal opinion, your
12 Honor; he is not saying I didn't think it has to be disclosed
13 or not disclosed.

14 THE COURT: Right.

15 Off the record.

16 (Discussion off the record)

17 THE COURT: I'll listen to you some more on this
18 tomorrow.

19 To be continued tomorrow, Mr. Reporter.

20 MR. CHERNOFF: And whenever it is convenient, your
21 Honor, we will update the Court about what we believe is the
22 schedule going forward.

23 THE COURT: Thank you.

24 (Adjourned to 10 a.m., Friday, October 19, 2012)

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GOVERNMENT EXHIBITS

Exhibit No.	Received
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3502-21379
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3502-2A1389
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7511390
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DEFENDANT EXHIBITS

Exhibit No.	Received
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1151414
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1161419
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118 and 1191423
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1201471
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1221476
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134 and 1351513
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1361516
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